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FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

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Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892.

The Council met at the Council Chamber on Saturday, the 19th January, 1895.

Present:

The Hon'ble Sir Charles Alfred Elliott, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The Hon'ble Sir Charles Paul, K.C.I.E., *Advocate-General.*

The Hon'ble H. J. S. Cotton, C.S.I.

The Hon'ble Sir John Lambert, K.C.I.E.

The Hon'ble D. R. Lyall, C.S.I.

The Hon'ble J. A. Bourdillon.

The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.

The Hon'ble F. R. S. Collier.

The Hon'ble C. E. Buckland.

The Hon'ble C. A. Wilkins.

The Hon'ble Romesh Chunder Dutt, C.I.E.

The Hon'ble Maharaja Ravaneshwar Prosad Singh Bahadur of Gidhour.

The Hon'ble Surendranath Banerjee.

The Hon'ble L. Ghose.

The Hon'ble Maharaja Sir Luchmessur Singh Bahadur, K.C.I.E., of Darbhanga.

The Hon'ble Maulvi Serajul Islam Khan Bahadur.

The Hon'ble J. G. Womack.

The Hon'ble J. N. Stuart.

The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.

NEW MEMBERS.

The Hon'ble Mr. Romesh Chunder Dutt and the Hon'ble Maulvi Muhammad Yusuf Khan Bahadur took their seats in Council.

RECRUITMENT OF ASSISTANT SUPERINTENDENTS OF POLICE.

The Hon'ble Babu Surendranath Banerjee asked—

Whether the attention of the Government has been drawn to the announcement which has appeared in the newspapers to the effect that a competitive

who summarily dismissed under section 95 of the Penal Code the case of assault instituted by one Keshab Lal Mitter against Mr. Beatson-Bell, although the substantial truth of the charge was subsequently admitted by Mr. Beatson-Bell? Is the Government aware that the said Deputy Magistrate put off under various excuses the granting of copies of the proceedings asked for by the complainant, for which expedition fee had been paid, and finally issued notice upon the complainant to show cause why he should not be prosecuted under section 211 of the Indian Penal Code? Is the Government aware that these proceedings have been condemned by the High Court? And is it the case that, notwithstanding these proceedings, the Deputy Magistrate was soon after promoted. If not, what action has the Government taken to mark its disapproval of his conduct?

The Hon'ble MR. COTTON replied:—

"The proceedings of the Deputy Magistrate referred to came under the consideration of Government. This officer was formerly Settlement Officer of Midnapore, and, as a consequence of hard work and exposure in that district, it was reported in April last that his brain was affected, and the Civil Surgeon then certified that he was suffering from cerebral derangement. He was accordingly allowed the privilege leave of two months and 21 days to which he was entitled, with effect from the 1st May last. While on leave he was transferred to Khulna, and he joined that district on the 26th July. The action taken by him in dealing with the complaint preferred by Keshab Lal Mitter on the 30th July was, in the Lieutenant-Governor's opinion, inexplicable, except on the hypothesis that his mind had not regained its equilibrium, and that he was still unfit to discharge properly the duties of a Deputy Magistrate. He was at once relieved of his duties, and called on to take further leave for such period as might afford him a fuller opportunity of recovering his health, and it was directed that he should not be allowed to rejoin until he was certified by a Presidency Surgeon in Calcutta to be quite recovered.

"Babu Satish Chunder Bose is an officer who has hitherto borne a high reputation, and as his name happened to stand, according to seniority, first for promotion from the sixth to the fifth grade of Deputy Magistrates, His Honour saw no sufficient reason for passing him over when a vacancy occurred, and he was accordingly promoted in his turn on the 14th September last."

[*Maulvi Abdul Jubbar; Mr. Dutt.*]

EMPLOYMENTS OF MUHAMMADANS IN BURDWAN DIVISION.

The Hon'ble MAULVI ABDUL JUBBAR KHAN BAHADUR asked—

Whether the Government is aware that the remarks of Mr. R. C. Dutt, the Officiating Commissioner of the Burdwan Division, that "in fact the Muhammadans in this Division are mostly cultivators, labourers and traders," under the heading "Employment of Muhammadans," paragraph 5, section 118 of the General Administration Report of the Burdwan Division for 1893-94, published in the supplement to the *Calcutta Gazette* of the 10th October last, do not accurately represent the social condition of the Muhammadans of that Division, and whether in justice to the Muhammadans of the Burdwan Division, the Government will ascertain the fact that in Bengal the Burdwan Division contains the largest number of respectable Muhammadan families for whose maintenance the Mogul Government granted Aima lands, which exist nowhere except in the Burdwan Division and in the district of Murshidabad, and that 50 years ago the Muhammadans of that Division were not only largely employed in offices under the British Government, but held in Bengal more than a moiety of the posts of Principal Sadar Ameens, which were the highest judicial appointments then open to the natives?

The Hon'ble MR. DUTT replied:—

"The remarks quoted by the Hon'ble Member occur at the end of paragraph 118 of the Commissioner's Divisional Report, and are based on the remarks of District Officers quoted in the preceding portions of the same paragraph, and assert a fact, which is undoubtedly correct, that most of the Muhammadan population of the Burdwan Division live by cultivation, trade and labour. This fact is not inconsistent with what is stated by the Hon'ble Member, viz., that the Burdwan Division contains a large, possibly the largest, number of respectable Muhammadan families of high social standing, holding Aima lands from olden times. This is well known to Government, and it is not necessary therefore to ascertain it by further enquiry. Nor does the Government think it necessary to ascertain what percentage of appointments under the British Government, and of the posts of Sadar Ameens, was held by the Muhammadans of this Division 50 years ago. Government has always desired that the Muhammadans of this and other divisions should qualify

themselves by education for obtaining their fair share of appointments in all offices, and the Hon'ble Member will find from paragraph 108 of the Burdwan Divisional Report that the Commissioner and the District Magistrates under him, are carefully noting the progress of education among Muhammadans from year to year."

STATEMENT OF THE COURSE OF LEGISLATION.

The Hon'ble the PRESIDENT said:—"When the Council closed its Session in the last autumn, there were three Bills before it which were referred to Select Committees. Those Bills were the amendment of the Revenue Sale Law Act, the amendment of the Public Demands Recovery Act, and a Bill to facilitate Sanitary Drainage.

"In regard to the Revenue Sale Law's amendment, I have to announce to the Council that the Government has resolved to withdraw that Bill from its consideration. It will perhaps be remembered that the main principle which underlay that Bill arose out of a suggestion which the High Court made in the course of the discussion of the amendment which originated in Mr. John Beames' time, and which had been pending for many years. It was to the effect that at present a proprietor whose estate is sold for arrears of revenue could make an objection to the Collector, then appeal to the Commissioner and then to the Board, and then start again on a new series of litigation by taking his case first to the Munsif and then appealing to the Subordinate Judge, or to the Judge of the District, and then again to the High Court. It was pointed out that this multiplicity of litigation was an evil in itself, and a state of things which should be avoided, and the High Court were ready to agree that all reference to the ordinary Civil Courts should be barred if we could assure them that the notices given to the proprietors, that their estates would be sold in default, could be made quite certain to reach them, so that no complaint could be made that their estates had been sold without their knowledge and at prices extremely incommensurate with their values. That suggestion seemed to me an extremely reasonable one, and one that it was highly desirable to adopt, and we set ourselves to work to frame a series of provisions to secure that the notice should be served under the conditions and in the manner suggested by the High Court, so as to ensure absolute certainty that the notices would reach

[*The President.*]

their destination. When the Bill was referred to a Select Committee, it was circulated to a large number of officials and non-officials, and the criticisms which we have received from those authorities have been of a very destructive character. It has been shown satisfactorily that the attempt made in the Bill to provide for an efficient service of notice would be in the last degree laborious and difficult, and could not be declared to be absolutely certain of success, and we have received advice from all quarters to abandon that portion of the Bill. This seemed to me to be the most important part of the Bill, and if it was abandoned, the result would be that there would be little left of any great importance which could be laid before the Council as a Bill which was worthy of their consideration. The criticisms which were received attacked also some other suggestions of amendment, and these also seemed to have considerable weight. I have decided, therefore, that it would be better to withdraw the Bill.

"It will be a matter for further consideration whether at a later date the Government should redraft such portions of the Bill as are not open to similar criticism, and which seem important enough to deserve the attention of the Legislature, and if so, a fresh Bill may possibly be laid before you; but there is nothing definitely settled at the present moment.

"The other two Bills—the Drainage and the Certificate Act Amendment Bills—are before Select Committees of the Council, and I trust they will now be able to resume their sittings and carry on the consideration of these measures.

"In the present Session we have to introduce several Bills, one of which is of considerable importance. It is a Bill to provide for the maintenance of a record of rights in districts in which there is a cadastral survey, and it is a Bill which will presently be introduced by the Hon'ble MR. BUCKLAND. That Bill we propose both to introduce and to read in Council to-day, and at a future meeting to refer it to a Select Committee.

"We also propose to introduce to-day a Bill to amend the Suburban Police Act and the Calcutta Police Act, so as to penalise the offence of improper solicitation on the part of public women or their touts, and with this Bill also I trust two steps will be taken to-day, and that the Select Committee stage will be reached at the next meeting of the Council.

"There are a few other Bills which are not yet quite ready to be presented, but which I hope will be brought under consideration during the present

Session. One is a Bill to introduce the Bengal Tenancy Act, with some slight alterations, into Chota Nagpur, one of its provisions being to regulate the procedure for the commutation of services which are still largely rendered there in lieu of the payment of rent. We consider it desirable that these services should be commuted. We have been in communication with the Government of India on this subject for a long time. Sanction for the introduction of the Bill has not yet been received, but I trust it will not now be long delayed.

"There is another Bill, also belonging to the Revenue Department, for an amendment of the law of partition in regard to which there have been discussions going on for a long time, but which I trust we shall be able to introduce during this Session.

"A small Bill to provide for the segregation of lepers will also be laid before the Council at the next meeting. We have just received intimation that the Government of India has sanctioned the introduction of this Bill, but we have not yet received an official communication on the subject, and we have therefore postponed its introduction to the next meeting.

"There are two other little Bills, one of which is to facilitate and regulate the establishment of works connected with the use of electricity for the lighting of Calcutta and for other purposes, and the other is a Bill to make some small amendments in the Calcutta Port Act, both of which have been hanging fire for some time. These Bills do not involve any matters of great importance, and I hope we shall receive sanction to introduce them before the close of the Session.

"I propose on the present occasion to suggest that, after introducing the two Bills, which will be introduced and read in Council to-day, we shall adjourn for about a month to allow time for these Bills to be considered by the public, and to enable us to receive any suggestions and criticisms that may be offered, and when we next meet we shall put these Bills forward a stage, and take such steps as it may be possible to take with regard to the Drainage Bill and the Certificate Act Amendment Bill, according to the progress which the Select Committees may make during the interval."

THE LAND RECORDS MAINTENANCE BILL.

The Hon'ble MR. BUCKLAND moved for leave to introduce a Bill to provide for the Maintenance of Records of Rights in Bengal, and for the recovery

[*Mr. Buckland.*]

of the cost of Cadastral Surveys and Settlements. He said:—

"In moving for leave, Sir, I may mention that by the Lieutenant-Governor's orders and under Rule 34 of the Rules for the Conduct of the Business of this Council, this Bill has already been published in the *Calcutta Gazette* of last Wednesday. It has been possible therefore to place the Bill at once in the hands of Hon'ble Members of Council, who will find, in the Statement of Objects and Reasons attached thereto, a brief description of the aims and intentions of Government. I should perhaps at this point make a few observations on the history of this measure, and I will make them as briefly as possible.

"It is well known to the Council that the survey and settlement of North Bihar has been for some time in progress, and that other large settlements are also being conducted in other parts of the country. In the discussions that have taken place regarding field surveys and the framing of records of rights ascertained at settlements, there has been a general consensus of opinion that an effort should be made to maintain the records which are prepared with great labour and expense, corrected in such a manner that they may not become obsolete, but may be readily available for ascertaining titles and interests in land, for the prevention of litigation, or for its despatch when undertaken. I will not pause to prove elaborately this consensus of opinion, but I will content myself with one quotation from the Secretary of State's despatch of 5th July, 1894, in which the following words occurred:—

'It has been regarded by the Home Government and by the Government of India as essential that the village record of rights, when once prepared by the Cadastral Survey, should be maintained and periodically corrected up to date.'

"It may also be within the knowledge of the Council that various schemes have from time to time been put forward for this purpose. Those who are curious in such matters will find some account of the discussion on the subject recorded in paragraphs 96 and 99 of the Summary of the Bengal Administration Report for the year 1893-94. It is only necessary for me to say here that the discussion was closed by the Secretary of State's despatch of the 5th July, 1894 already mentioned, which was published in the Supplement of the *Calcutta Gazette* of the 3rd of October, 1894. The decision then arrived at by the Secretary of State was that a Bill should be introduced into the Legislature for the maintenance of the records of rights in Bengal, and that the scheme of the Bill should provide for increasing the number of Rural Registrars, and for compelling, by various

disabilities, landlords and the tenants of various degrees to register all changes of rights and occupancies as they occur. The Secretary of State approved also of the adoption of such sanctions and safeguards as might be considered expedient, but without the imposition of any fresh tax beyond a moderate fee on registrations. The Bill now before the Council has been prepared in conformity with this authority of the Secretary of State. It has been prepared with the assistance of the Board of Revenue and some of the most experienced Settlement Officers of the province, and the sanction of the Government of India has been given to its introduction into this Council in its present form.

"Presuming that Hon'ble Members have been able to glance over the brief Statement of Objects and Reasons, I will now proceed to give a more detailed account of its provisions. The Bill is to apply only to the districts or parts of districts in which survey-settlements have been carried out under the Tenancy Act, or any other law, to which the Lieutenant-Governor may extend its operation. The Record of Rights has been defined to mean the documents called the khewat, which records proprietary interests, and the khatian, which records the tenants' interests. The Bill, it will be observed, is divided into three parts, of which Part I—Registration of Mutations, and Part III—Miscellaneous, contain the main provisions required for the Maintenance of Records of Rights. It is intended that the Registrars and Sub-Registrars appointed under the Indian Registration Act shall also be Registrars of Mutations of the proprietary and tenants' rights indicated in the Bill, and shall keep such registers as may be prescribed. In one of these registers all changes affecting the entries in the record of proprietary rights, and in another all changes affecting the record of tenants' rights, are to be entered by the Registrars of Mutations under certain procedure.

"As the Sub-Registrars are necessarily stationary and not peripatetic officers, it is necessary to secure that the mutations which they have to register shall reach them at their offices. It has therefore been provided that information of mutations having taken place shall reach these officers in the following manner. All persons acquiring proprietary rights are to be allowed their option of giving notice of the mutation to the Sub-Registrar, instead of applying to the Collector under the provisions of the Land Registration Act for registration of their names and interests: the Sub-Registrar is to forward the notice to the Collector, and when the Collector has ordered any mutation of names under

the Land Registration Act, and has communicated the fact of such mutation to the Sub-Registrar, the latter is to record it in one of his Registers of Mutations.

"All persons transferring their rights as tenure-holders, raiyats at fixed rates, and as occupancy raiyats, and all persons claiming to have acquired the status of such tenants, are to give notice to the Sub-Registrars; and such notice is to be treated as a document under the Indian Registration Act. The Sub-Registrar is to notify the fact of such reported transfer to the landlord, and to record the fact of the transfer, and of the landlord's consent or non-consent thereto, in the other of his two Registers of Mutations.

"It might be hoped that these provisions would provide for the registration of all changes of proprietary and tenants' interests; but it is considered desirable, as a matter of precaution, to provide other means of giving completeness to the scheme. For this reason power is taken to direct holders of estates or tenures to file in the Sub-Registrar's office periodical statements of changes in the record of rights in each village. I notice that the Bill as drawn contains no penalty for failure on the part of the holder of the estate or tenure to comply with this direction, and it will be necessary to insert one. Moreover, all Sub-Registrars to whom, when acting under the Indian Registration Act, instruments or memoranda of transfers of proprietary or tenant rights in land are presented or forwarded for registration under the provisions of that Act, will be required to proceed to take steps as if the above mentioned notices of mutation had been made to them as Registrars of Mutations, and to have entries made in their Registers of Mutations. Also, the Civil Courts are to be required to keep the Sub-Registrars informed of every decision affecting proprietary and tenant rights in land.

"Bearing in mind the want of complete success which has attended the working of the Land Registration Act in the case of proprietary titles, it would perhaps be too much to expect that the very considerable extension of registration work now aimed at could be completely successful. On the other hand, it has been brought to my notice by a high authority on the subject that, in one of the Bihar districts at least, although the landlords have not largely availed themselves of the provisions of the Land Registration Act in the past, the days when the automatic sanction of that Act was a failure are passing away. I am informed that there is no such apathy among the transferees of tenures; and that there is not a rent case in the district where

this special ground (of non-registration of title) is not invariably taken, so that the pettiest shareholders are beginning to register their names with the Collector before they attempt to sue. To ensure then that the provisions of the Bill which require the registration of mutations shall be as fully observed as it is possible to ensure anything by foresight, some sections, numbered 15 and 16 in the Bill, have been inserted, which will entail on the parties what may be called self-acting disabilities, as well as direct penalties for failure to give notices of mutation either of proprietary or tenant rights in land. The principle of these disabilities in the case of proprietary rights is not new, as it is borrowed from the Land Registration Act, to which I have referred, and it will now be extended to tenants' rights.

"The Miscellaneous part of the Bill contains provisions of the usual character, namely, for appeals and for taking power to make and alter rules, with which I need not trouble the Council further at this moment.

"Part II of the Bill refers to a different subject, which is only brought in here because legislation is now being undertaken. I have hitherto been dealing with the question of maintaining the records of settlements. Part II, as Hon'ble Members will see, relates to the recovery of costs of a survey-settlement, *i.e.*, of a survey and preparation of a record of rights. The principle that the expenses of survey and settlement operations shall be defrayed by the landlords and tenants of lands in the local area under survey-settlement in such proportions as the Local Government, having regard to all the circumstances of each case, may determine, is now the law, as contained in section 114 of the Tenancy Act of 1885. Such expenses have already been recovered in several cases under orders of apportionment issued by the Local Government. In paragraph 74 of his minute of the 20th of September, 1893, the Hon'ble Sir Antony MacDonnell stated that the provisions of this section 114 have been found in practice to be in some cases defective. He mentioned certain conditions and objections to the method now provided by law as indicating the desirability of devising some means for improving the method of recovery of the costs of a survey and settlement by a transitory cess. The idea which then found favour was that a temporary cess for this purpose should be levied after the manner of the Roads and Public Works cess, which has long been familiar in Bengal. But when the Secretary of State's orders were received with regard to the apportionment of the expenditure in the North Bihar Survey

in certain definite shares between the State, the zamindars, and the raiyats, it soon became apparent that it would be impossible to maintain any close approximation to the apportionment so sanctioned if the method of the Roads and Public Works cess was observed. That method has, therefore, with the concurrence of the Board of Revenue, and with the cognizance of the Government of India, not been reproduced in the present Bill. It is now proposed to provide a system supplementary to section 114 for facilitating the recovery of the cost of the survey-settlement by a temporary cess, to be levied rateably per acre from proprietors and tenants as well as owners and occupiers of revenue-free and rent-free tenures and holdings. It will be open to all parties to pay up their shares of the cost either in one payment or by instalments. As regards proprietors, a promise was made to them in 1892 that, when the cost imposed on any single estate is large, payment should be facilitated by taking it in instalments, and this condition will be carried out by the Bill. As regards tenants, their share of the cost is small, and it is conceived that they will usually pay when the extract from the khatian which contains the records of their rights is presented to them: if not they also will be allowed to pay in instalments, but in this case they will have to pay an additional sum of 20 per cent., which will be retained by the proprietors as cost of collection. Under the Road Cess Act the proprietors receive nothing for the expense and risk they incur in collecting their share of the cess from the tenants, and the present provision has been made to prevent objection being taken to the imposition of this duty on the landlords as being an additional burden on them from which they derive no advantage. But it may be safely anticipated that the burden will not be a serious one in any individual case.

"At the beginning of my remarks, I stated that the Bill has been published in the Gazette. As it is a short Bill, and hon'ble members have presumably been able to make themselves generally acquainted with the intentions of Government, I trust that the motion which now stands in my name will be carried, so that the Bill may be read in Council to-day. It is not proposed to proceed further with it in Council for some weeks. Meanwhile, the Bill will be circulated to certain Commissioners and District Officers in the parts of the country where extensive settlement operations are in progress, and the leading Associations of the country, which are specially interested in survey and settlement matters, will be further consulted without delay. It is hoped that their

reports will be received in the course of a month, and that the Bill may then be referred to a Select Committee."

The Hon'ble MAHARAJA SIR LUCHMESSUR SINGH BAHADUR OF DARBHANGA said:—"I wish to reserve my remarks on this Bill until such time as a motion is made to refer it to a Select Committee, but certain remarks have fallen from the hon'ble member in charge of the Bill, in consequence of which I desire to say a few words.

"The hon'ble member said that under the Road Cess Act the proprietors receive nothing for the expense and risk they incur in collecting their share of the cess from the tenants, and the present provision has been made to prevent objection being taken to the imposition of this duty on the landlord as being an additional burden on them from which they derive no advantage. But it may be safely anticipated that the burden will not be a serious one in any individual case. But I think that in many cases, although you are allowing him 20 per cent. for cost of collection, the zamindar will suffer very considerably if you make him, against his will, liable for arrears unrecoverable from raiyats. I know of one case in which a zamindar has for a long time been paying the Government revenue and cesses punctually, though tenants default and disappear. Only the other day he was unable to pay a small portion of the road cess that was due from some of his raiyats, and his property was sold in consequence. The case is now being fought out in the Board of Revenue. For the last two years he has been kept out of possession of his property. I consider that a very serious case for that particular landlord. I think that if this record of rights is really so beneficial to the tenants as it is expected, the raiyats will of their own accord come forward to pay their portion, and I think zamindars should not be made liable for the collections, except in those cases in which they themselves specially desire it. It is true that according to the Road Cess Act, zamindars are liable for the payment of their raiyats' share of the road cess, but because the sin has been committed once, it is no reason why it should be committed a second time. I do not think one man should be made liable for the debts of another person. Then, as regards the last paragraph of the hon'ble member's speech, I see that it is proposed to ask the opinions of certain Commissioners and District Officers, as well as Associations of the country, and I think we ought to be thankful to the Government

[*Maharaja of Darbhanga; Maulvi Muhammad Yusuf; Maharaja of Gidhour.*]

for having given us the opportunity of laying our views before them on the present Bill, but if I might do so, I would suggest that this Council should also ask for the opinions of District Judges and the High Court Judges. I had the honour of serving on the Select Committee of the Bengal Tenancy Act, and I can assure you that we derived very great assistance from the opinions of the District Judges and the Judges of the High Court. In conclusion, I again thank the Government for allowing us one month's time to put forward our opinions. When the matter comes to the Select Committee stage, I shall be in a position to express an opinion from the zamindar's point of view."

The Hon'ble MAULVI MUHAMMAD YUSUF KHAN BAHADUR said:—"I do not, at the present stage, desire to offer any opposition to this Bill or to discuss at any length the principles and details relating to the same. I may be allowed to state that I have seen the Bill for the first time in the Council Chamber to-day, and I have therefore not been able to familiarise myself with the provisions it contains, and I know nothing at present with certainty and precision regarding a subject of such vast importance except such general information as I have been able to glean casually from the public press. I have not seen the Bill in the *Calcutta Gazette*, and I am not therefore in a position to make any useful observations in regard to the same. I submit that a sufficiently long period should be fixed in order that public criticism might be obtained, and it appears to me that one month might be sufficient for that purpose. As regards the persons from whom criticisms should be invited, I perfectly agree with the Hon'ble MAHARAJA SIR LUCHMESSUR SINGH OF DARBHANGA that District Judges and the Hon'ble Judges of the High Court should also be requested to submit their opinions on the subject of this Bill. I hope there will be no objection to this course being adopted."

The Hon'ble MAHARAJA RAVANESHWAR PROSAD SINGH BAHADUR OF GIDHOUR said:—"I beg to support the proposal made by the Hon'ble MAHARAJA SIR LUCHMESSUR SINGH OF DARBHANGA. In my humble opinion an important measure like the cadastral survey and the maintenance of the record of rights which concerns a large body of land-holders and tenants should not be rushed through. The opinion of the different land-holders' associations and members of the Judicial Service and of the Bar should be taken before the Bill is

referred to a Select Committee. This, I humbly submit, appears to me to be the right course to adopt in regard to a measure of such vital importance as the Bill before us."

The Hon'ble MR. BUCKLAND said:—"I think I understood the Hon'ble MAHARAJA SIR LUCHMESSUR SINGH OF DARBHANGA to say that he offered no serious opposition to this Bill being introduced, and that he reserved his remarks until the Bill reached a further stage and was referred to a Select Committee. It is not therefore necessary for me to detain the Council by replying on this occasion to what the Hon'ble Member has said."

The Hon'ble the PRESIDENT in closing the debate said:—"On the part of the Government, I shall be very happy to accept the suggestion which has been made by my hon'ble friends who have spoken that District Judges and the High Court should be included in the number of those who should be consulted on the provisions of this Bill. I should explain that what is referred to here is a Circular to be sent out by the Government, not by this Council. It will be in the option of the Council or of the Select Committee to consult any one they like; but the idea in our minds was that we should save a certain amount of trouble and expedite business by circulating the Bill and asking opinions beforehand, so as, if possible, to get the opinions before a Select Committee is appointed and begins its sittings. But it will be entirely in the power of the Select Committee when they begin to sit to take any steps they wish and to call for further opinions. Nothing done by the Government at this stage can bind the Committee or check their action in this matter.

"With reference to what fell from the Hon'ble MAHARAJA SIR LUCHMESSUR SINGH OF DARBHANGA about the incidence of the cost of the cess upon the tenants, I agree with him, in the hope that in almost all cases the cess which falls on the tenants will be paid by the tenants themselves immediately when the extract from the register, which is the record of their rights—the *khatian* as it is called, is delivered to them. In private settlements, and in settlements of wards' estates, it has been found as a rule that payments have been made in this way. But there are of course cases in which payments have been refused or deferred, and it is to meet such cases that the provision which has been referred to by the Maharaja has been made, namely, that the cess should be recovered through the landlords, who would retain a percentage of 20 per cent. to cover the risk

of recovering the cess from their tenants and the expenses consequent thereon. When it is remembered that the average cost of a survey-settlement is expected to be about 8 annas, and I think nowhere, even under the difficult circumstances in the northern parts of Bihar and Bhagalpur, does it exceed 10 annas per acre, and that the tenants' share of that is $\frac{5}{16}$ths, or $2\frac{1}{2}$ annas—$2\frac{1}{2}$ annas being an extremely small proportion of the average rent which in Bihar we take to be from Rs. 3 to Rs. 4 per acre—it does not seem to me that the addition of $2\frac{1}{2}$ annas per acre upon a rental of from Rs. 3 to Rs. 4 per acre is likely to prove a material source of distress to zamindars, or a sum which is not likely to be recovered on the rare occasions referred to by the Maharaja, when tenants default or disappear. It seems to me that the trouble and risk would be covered by the 20 per cent. commission which we have allowed.

"I should like to make one further remark in addition to what was said by the Hon'ble MR. BUCKLAND in introducing the Bill. I wish to point out that in framing this Bill we have attempted to achieve an end which has been long sought for, and which to my own knowledge has been aimed at in the provinces of Northern India, but which has not been attained hitherto. Under the present system, when mutation of proprietary rights occurs either by sale or mortgage, or any transfer which involves a deed, the successors have to undergo two different operations. They have first to go to the Registry Office to obtain registration by depositing their deeds; they then go to the Collector's office to obtain mutation of names, which is ordinarily known as *dakhil kharij*. It has always seemed to me, and the point was mentioned long ago in one of Sir Henry Maine's minutes, that an undue amount of trouble is imposed upon the parties by compelling them to carry out these two different operations in two different places, and I think we may claim to have conferred a benefit upon the proprietary body by the proposal which this Bill contains, namely, that by one and the same operation we carry out the two results. They will now be able to go with their deeds to the Sub-Registrar—a course which will *ipso facto* have the effect which, under the former procedure, required two operations, namely, a second journey to the Collector's office to effect mutation. At one and the same time the registration of the deed will be accomplished and the mutation of names recorded in the Collector's office, and thus a considerable saving in trouble and expense will be effected."

The Motion was put and agreed to.

[*Mr. Buckland; Babu Surendranath Banerjee; the President.*]

The Hon'ble MR. BUCKLAND applied to the President to suspend the Rules for the Conduct of Business to enable him to introduce the Bill and to move that it be read in Council.

The Hon'ble BABU SURENDRANATH BANERJEE said:—"If I am in order, I may be permitted to enquire why the Rules of Business should be suspended in this case, and in fact it is proposed to suspend them also in connection with another Bill on the agenda paper of to-day, which is to be introduced by the Hon'ble SIR JOHN LAMBERT. The same procedure was followed with regard to two or three Bills last year. The Council has got a body of rules, and they ought not to be departed from, except in a case of extreme urgency, and up to this time the ground has not been made out for a case of extreme urgency so far as the Bill now before the Council is concerned."

The Hon'ble the PRESIDENT said:—"The Rules of the Council provide that the President, for sufficient reason, whether on the application of a member or otherwise, may suspend any of the rules for a particular purpose.

"The object of suspending the Rules on this occasion is to avoid the necessity of calling the Council together on Saturday next simply to forward this Bill by a single stage. It appears to me that no sufficient object will be gained by putting hon'ble members to this inconvenience. I declare the Rules suspended."

The Hon'ble MR. BUCKLAND then introduced the Bill, and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accordingly.

PUBLIC DEMANDS RECOVERY ACT, 1880, AMENDMENT BILL.

The Hon'ble MR. BUCKLAND moved that the Hon'ble MR. WILKINS be added to the Select Committee on the Bill to amend the Public Demands Recovery Act, 1880, in the place of the Hon'ble MR. ALLEN, retired.

The Motion was put and agreed to.

[*Sir John Lambert.*]

CALCUTTA AND SUBURBAN POLICE ACTS, 1866, AMENDMENT BILL.

The Hon'ble SIR JOHN LAMBERT moved for leave to introduce a Bill to further amend the Suburban Police Act, 1866, and the Calcutta Police Act, 1866. He said :—

"The amending Bill has been rendered necessary on account of certain representations which were made to the Government by persons of influence, both Natives and Europeans—persons to whose influence and to whose representations the Government have considered it right to attach considerable weight. They approached the Government on the ground that in many parts of the town considerable annoyance is caused to residents and to passers-by by solicitations to immorality made in the public streets. Speaking for myself I am not prepared to say that the evil complained of has reached any very considerable growth in the Town of Calcutta, when regard is had to the area and the population of the Town of Calcutta and the Suburbs. But still it is a matter of notoriety that in certain parts of the town the annoyance complained of does exist, and the Government are anxious that relief should be given by the grant of powers to the Police which they do not now possess. The local Acts to which I have referred, and which regulate the powers of the Town and Suburban Police, contain no provision enabling the Police to deal effectually with offences of the nature to which I have drawn attention ; therefore the only course which is open to the public or to the Police is to proceed by summons, and to deal with these matters as public nuisances, and to prosecute under the provisions of the Penal Code. But in such cases the Courts require independent evidence, and I think the Council will agree with me in considering that respectable persons who have a substantial grievance of this sort should not be put to the annoyance and trouble of appearing in open Court and making a public statement of the facts which constitute the grievance of which they complain. This, I think, is the view which the Government take, and it is on these grounds that it is proposed to vest the Police with powers which they do not now possess.

"Turning to the Bill, which is in the hands of hon'ble members, it will be seen that it is proposed to amend the Suburban Police Act as well as the Calcutta Police Act. But if this is done, it is not proposed to set the Police in motion indiscriminately in all parts of the Town and Suburbs, but

only in those localities where complaint has been made and where it is known that a real and substantial grievance exists. The Council will also see that safeguards have been provided in the Bill by enacting that only officers above the rank of constable and other selected officers will be permitted to exercise the new powers, and further that summary arrest is prohibited whenever the name and address of the offender are known or can be at once ascertained. Turning to the section which provides punishment, it cannot, I think, be contended that the punishment provided in the Bill is more severe than is necessary to act as a deterrent in the majority of cases which will come before the Courts. The offenders who have to be repressed are chiefly male touts who act on behalf of women, and I think it cannot be said that such punishment will be regarded as excessive in the case of such persons. As regards women who cause annoyance by open solicitation, I think their number is not very great, and I am of opinion that as soon as it is known that summary powers have been granted to the Police, the cause of complaint in this direction will be very largely diminished. With these remarks, I move for permission to introduce a Bill to amend the Suburban Police Act, 1866, and the Calcutta Police Act, 1866."

The Hon'ble MAULVI MUHAMMAD YUSUF KHAN BAHADUR said:—"I for my part support this motion most unhesitatingly, and if I am at liberty to say so, the Hon'ble SIR JOHN LAMBERT has placed the general public under a deep debt of gratitude by introducing this measure. This Bill is a step in the right direction, and I have no criticism to make on the principle of the Bill. The only question which may be raised is whether it has gone far enough to remedy the evil which it is the object of the Bill to prevent. With regard to the powers proposed to be conferred upon the Police, it is not necessary to offer any opinion at present, and therefore I reserve my remarks to the next meeting of the Council."

The Motion was put and agreed to.

The Hon'ble SIR JOHN LAMBERT applied to the President to suspend the Rules for the Conduct of Business to enable him to introduce the Bill, and to move that it be read in Council.

The Hon'ble the PRESIDENT having declared the Rules suspended—

[*Sir John Lambert; Mr. Lyall.*]

The Hon'ble SIR JOHN LAMBERT introduced the Bill, and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accordingly.

BENGAL SANITARY DRAINAGE BILL.

The Hon'ble MR. LYALL moved that the Hon'ble MR. DUTT be added to the Select Committee on the Bill to facilitate the construction of drainage works for improving the sanitary condition of local areas.

The Motion was put and agreed to.

The Council adjourned *sine die*.

CALCUTTA;
The 5th February, 1895.

GORDON LEITH,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Reg. No. 842C.—300—5-2-95.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892.

THE Council met at the Council Chamber on Saturday, the 16th February, 1895.

Present:

The HON'BLE SIR CHARLES ALFRED ELLIOTT, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The HON'BLE SIR CHARLES PAUL, K.C.I.E., *Advocate-General.*

The HON'BLE H. J. S. COTTON, C.S.I.

The HON'BLE SIR JOHN LAMBERT, K.C.I.E.

The HON'BLE D. R. LYALL, C.S.I.

The HON'BLE J. A. BOURDILLON.

The HON'BLE MAULVI ABDUL JUBBAR KHAN BAHADUR.

The HON'BLE F. R. S. COLLIER.

The HON'BLE C. E. BUCKLAND.

The HON'BLE C. A. WILKINS.

The HON'BLE ROMESH CHUNDER DUTT, C.I.E.

The HON'BLE SURENDRANATH BANERJEE.

The HON'BLE L. GHOSE.

The HON'BLE MAULVI SERAJUL ISLAM KHAN BAHADUR.

The HON'BLE MAHARAJA JAGADINDRA NATH ROY OF NATOR.

The HON'BLE MAULVI MUHAMMAD YUSUF KHAN BAHADUR.

ASSAULT BY MR. BEATSON-BELL.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Whether the attention of the Government has been called to an assault alleged to have been committed by Mr. Beatson-Bell, Joint-Magistrate of Tippera, upon an Indian Deputy Magistrate of the place? Whether the matter has formed the subject of any official correspondence? If so, will the Government lay on the table the correspondence which has taken place in this connection?

[*Mr. Lyall; Babu Surendranath Banerjee; Mr. Cotton.*

The Hon'ble MR. LYALL, in the absence of the Hon'ble MR. COTTON, replied:—

"The attention of Government was drawn to this matter, but it has not formed the subject of official correspondence, and no papers therefore can be laid on the table.

"The facts of the case are briefly as follows:—Athletic sports were being held at Comilla on New Year's Day, and were attended by a large crowd: Mr. Beatson-Bell, while engaged in keeping the course clear, gave a push to a Deputy Magistrate, who was among the crowd and was not known to him at the time, and that gentleman unfortunately stumbled and fell, dislocating his shoulder. No one can regret this incident more deeply than Mr. Bell does, and the Deputy Magistrate, whose conduct is very creditable to him, has been the foremost to acknowledge the accidental character of the injury he sustained."

STOPPAGE OF A RELIGIOUS CEREMONY AT PAKOUR.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Whether the attention of the Government has been called to the proceedings of the Subdivisional Officer of Pakour in the Sonthal Parganas, as published in the *Murshidabad Hitaishi* of the 7th November, 1894, which says that the Subdivisional Officer stopped a particular religious ceremony observed from time immemorial, on the occasion of the annual Kali Puja, by the *Goalas* of that part of the country, and thus hurt the religious feelings of the local public, and caused great dissatisfaction among the orthodox Hindus of the locality? Will the Government be pleased to order an enquiry, and adopt such measures as it may think fit with a view to prevent such interference in future?

The Hon'ble MR. COTTON replied:—

"The attention of Government was attracted to the paragraph in the *Murshidabad Hitaishi* referred to, and enquiry was made on the subject. It was ascertained that it was an old custom among the Sonthali cowherds on occasion of the Kali Puja to cast a pig among a herd of cattle, by whom it is gored to death in a brutal manner. Mr. McLaren Smith, the Subdivisional Officer of

Pakour, considering this custom to be a breach of the law for the prevention of cruelty to animals, prohibited it by executive order in 1893 and again in 1894. The cowherds represented the matter to the Commissioner when he recently visited the subdivision, but Mr. Toynbee declined to interfere. The Lieutenant-Governor approves Mr. McLaren Smith's action, and declines to believe that the prohibition of this barbarous and disgusting custom can have hurt the religious feelings of any orthodox Hindus."

THE LEPERS BILL.

The Hon'ble MR. BOURDILLON moved for leave to introduce a Bill to provide for the segregation of pauper lepers, and the control of lepers exercising certain trades. He said:—

"MR. PRESIDENT—In accordance with the List of Business of the day, I have now to move for leave to introduce a Bill to provide for the segregation of pauper lepers and the control of lepers exercising certain trades; and in conformity with the practice of this Council, I have now to introduce the Bill by concisely giving the history of its origin, and by explaining at somewhat greater length than could be done in the brief Statement of Objects and Reasons what its chief objects are, and what means Government propose to adopt in order to carry them out. Any discussion which may be thought desirable in respect of the principles on which it is based will take place when I next move on a subsequent occasion to refer the Bill to a Select Committee.

"It is unnecessary for me to lay before this Council any elaborate history of leprosy in India, to quote instances from Indian history to prove its existence from the earliest times, or to depict the treatment of lepers at various epochs. Let it suffice to say that the leper has always evoked the sympathy of the benevolent, and sometimes the antipathy of the ignorant, while he has from time to time attracted the fitful attention of the ruling power. But whatever has been done for the relief of lepers has been done in a desultory fashion; and although shelters are believed to have been erected in various places, and the Calcutta Asylum was established in 1811, yet no concerted scheme to better their condition has ever been carried into effect in Bengal, and no actual steps, so far as I know, have ever been taken to enforce the segregation of pauper lepers while providing them gratuitously with food, shelter and medical treatment.

"Of late years, however, public interest in the condition of lepers has been aroused in many countries. The National Leprosy Fund was started under the presidency of the Prince of Wales in 1889, and the attention of educated India was attracted to the subject at about the same time. In 1888, the Government of India, in a Resolution dated the 26th September, encouraged the grant of medical and charitable relief to lepers in voluntary hospitals and leper asylums. In the following year, the Governor General found reason to again consider the subject, and under his orders another Resolution was recorded on the 15th June, 1889, in which it was laid down that, in the opinion of His Excellency in Council, further measures might with advantage be taken with the object of promoting the establishment of asylums or retreats for lepers, and of giving legislative sanction to the retention of lepers in such retreats. With this Resolution a draft Bill was circulated to Local Governments for report, and they were invited to consult the best available opinion on the matter, both official and non-official. The main provisions of this Bill did not differ very greatly from those which are contained in the Bill now to be laid before Council, but it contained a clause allowing lepers voluntarily to seek admission into a retreat or asylum, either for life or for a term of years: it provided for the punishment of lepers who escaped from retreats, insisted on the separation of the sexes among segregated lepers, and gave general powers to Government to make rules for the management and discipline of asylums: it did not lay down, with the precision of the present Bill, the distinction between pauper lepers and others, nor did it make any provision for the prohibition of lepers not paupers from engaging in certain trades or callings which would bring them into immediate contact with the food, drink and clothing of their fellow-men. No less than forty-one non-official bodies and leading officials were consulted, and their opinions were communicated to the Government of India with Sir John Edgar's letter of the 23rd January, 1890. Sir Steuart Bayley accepted generally the provisions of the Bill, but pressed the necessity of prohibiting those coming under the definition of lepers, under penalty of compulsory detention in an asylum, from engaging in trades which involve the preparation and sale of food or clothing, or as washermen, or barbers, and from the use of public tanks, possibly also of travelling by public conveyance. He also proposed to authorise Local Governments to compel contributions from municipalities for the lepers found in such municipalities asking for alms or wandering about without ostensible means of subsistence.

"Not many months after the despatch of this report, the Secretary of State agreed to the proposal of the Executive Committee of the National Leprosy Fund to appoint the Leprosy Commission, which in due course visited India in 1890 and 1891, and submitted a report in the year 1893. While the enquiries of this Commission were proceeding, the Government of India took no action in the matter; but on the 15th September, 1893, the Supreme Government forwarded to the Government of Bengal certain papers received from the Executive Committee of the National Leprosy Fund commenting upon the report of the Leprosy Commission, together with a memorandum by the Surgeon-General with the Government of India, and requested the Lieutenant-Governor to favour them with his recommendations for giving practical effect to the conclusions of the Leprosy Commissioners.

"At the time that these orders were received, Sir Antony MacDonnell was officiating as Lieutenant-Governor of Bengal, and under his instructions a Resolution was recorded (No. 608T.M. of the 31st October, 1893), in which he reviewed the existing state of the law as regards the control over lepers, and the power of isolating them, whether in Calcutta, in mufassal municipalities or in rural areas generally, and sketched in general terms the measures which he considered to be at once desirable and practicable for the amelioration of the condition of the lepers themselves, and for the protection of the general public. Copies of this Resolution were forwarded for opinion to those persons and public bodies who seemed most likely to make suggestions of value, or who were most closely concerned with the subject, and when the replies were received, it was found that they displayed a general consensus of opinion in favour of a modified system of compulsory segregation and of rigid prohibition from the pursuit of certain trades and callings, while the Legal Remembrancer, who was one of those consulted, advised that these ends could not be compassed without recourse to legislation. In accordance with these recommendations the Government prepared a draft Bill, which was forwarded to the Government of India on the 19th June last for approval, and sanction to its introduction into the Bengal Legislative Council was received on the 7th instant.

"The Bill divides itself naturally into three parts. The first part, consisting of sections 1 to 6 and section 15, lays down some necessary definitions, and gives to the Local Government certain essential powers. The second part

(sections 7 to 11) deals with the segregation of pauper lepers; while the third part (sections 12 to 14) treats of the restraints to be placed upon lepers who are not paupers, in respect of the exercise of certain callings.

"Turning back to the first group of sections, it will be observed that the definition of leprosy for the purposes of this Act is made to turn upon the question of ulceration. The Lieutenant-Governor is advised that whatever the class of leprosy, whether tubercular, anæsthetic, or a combination of the two, the period of possible contagion is not reached till ulceration has set in, and for this reason he proposes to make the presence of that condition the test of leprosy. The definition of pauper leper, on the other hand, is based upon the provisions of section 70 of the Calcutta Police Act [IV (B.C.) of 1866] and of section 3 of Bombay Act VI of 1867. Section 3 of the Bill also follows to some extent section 1 of Bombay Act VI of 1867, and empowers the Local Government to declare any place to be a Leper Asylum, and to notify the local areas from which lepers may be sent to it. Section 4, which is taken from section 3 of the draft Bill originally propounded by the Government of India, empowers local authorities to expend funds on, and appropriate property to, leper asylums. Section 5 gives the Lieutenant-Governor the necessary power of appointing Inspectors of Lepers and Superintendents of Leper Asylums with the necessary establishment, and section 6, following the analogy of section 2 of Act XXXVI of 1858, empowers him to appoint a Board for each Leper Asylum, as he can now do for each Lunatic Asylum in the Province. Section 15 bestows on the Local Government the necessary authority to make rules for carrying out the purposes of the Act.

"Sections 7 to 11 deal with the arrest and examination of pauper lepers within duly defined local areas for which a leper asylum has been provided, as well as for their detention and inspection in, and discharge from, such asylums. Section 7 follows sections 70 and 72 of Act IV (B.C.) of 1866, which already in Calcutta empower any police officer to arrest without warrant any person begging in a public place or exhibiting sores in order to excite charity, and it also follows, with slight modifications, section 54, Act X of 1882. Sections 8 and 9 provide that a person who is suspected of being a pauper leper shall be brought without delay before an Inspector of Lepers, and then before a Magistrate duly authorized under this Act, and the procedure laid down in both these sections has been made as summary and simple as possible.

Briefly, the Inspector of Lepers will decide whether the person brought before him by the police as a pauper leper is a leper or not; if he is not, he will be discharged with a certificate to that effect; if he is, he will be forwarded to the Magistrate, and the latter will decide whether he is a pauper leper or not. Sections 10 and 11 provide for the periodical inspection of lepers by the Asylum Board after their admission to an asylum, and for their discharge whenever such a course is possible: the provisions of the Lunatic Asylums Act (XXXVI of 1858, sections 3 and 9) have been closely followed.

"The control of lepers other than paupers, and of their connection with certain trades and callings, is dealt with in sections 12 to 14. The object of these sections is to prevent lepers from engaging in trades which are closely connected with the food, drink and clothing of their fellow-men. Therefore section 12 enables Municipal Commissioners, by bye-laws under the Municipal Acts, duly made and approved by the Local Government in that behalf, to prohibit any person who is reasonably believed to be a leper from carrying on any of certain specified trades or callings within defined limits until he has proved that he is not a leper. In order to make this section still further effective, section 13 empowers an Inspector of Lepers to examine (with proper safeguards) persons suspected to be lepers, while an appeal to the Local Government against a certificate of leprosy is provided by section 14 for lepers other than pauper lepers. The latter can present themselves constantly before the Visiting Board, and no further right of appeal seems required in their case.

"The schedule to the Act prescribes the necessary forms of certificate of leprosy and non-leprosy, of warrant for detention in a Leper Asylum, and of discharge.

"In the foregoing remarks I have indicated the leading features of the Bill, and I have now to say only a few words as to the extent to which Government propose to introduce its provisions, the number of persons likely to be affected by it, and the experience gained in Bombay by those who have been administering a similar measure for some years.

"From the first it has been recognised as probably desirable that legislation should be resorted to in order to enforce the segregation and regulate the conduct of lepers in towns only, and that no attempt should be made to interfere with the movements of lepers in rural areas. This policy has not been lost

sight of in the preparation of the present Bill, and there is no intention of extending its provisions to rural areas. The portion which deals with the arrest and detention of pauper lepers cannot come into force anywhere until, under section 3, the Lieutenant-Governor has notified a place to be a Leper Asylum, and has under the same section notified and defined the local areas from which lepers may be sent to such asylum. It is the intention of the Government to notify under this section no local areas except municipalities, so that the powers given to the Police by sections 7, 8 and 9 will be exercised in municipalities only, for the Lieutenant-Governor thinks that it would be unwise to give such power of arrest to the district police in villages and on country roads. The portion of the Bill (sections 12—14) dealing with lepers who pursue certain trades will extend, on the passing of the Act, to all municipal areas; but the bye-laws, without which these provisions of the Bill will remain inoperative, will require the sanction of the Local Government, and an appeal will lie against any order passed by an Inspector of Lepers under section 12.

"Of the number of persons who would at once be affected by the passing of this Act, it is impossible to give any estimate. The published statistics of the Census of 1891 do not show separately the lepers in municipalities and those in the country. Moreover, even did they do so, some additions would probably have to be made to the figures on account of incomplete enumeration, especially in the case of females, and large deductions would be necessary to allow for those who are either pauper lepers or who do not carry on any of the forbidden trades. In regard to pauper lepers, the number who would at once be affected by the provisions of sections 7 to 11 of the Act is greatly restricted by the fact that until a duly constituted asylum is provided, and local areas are defined from which lepers may be sent to it, the Police cannot exercise the powers of arrest and so forth given them by sections 7, 8 and 9 of the Act. As far as Government are aware, the Asylum in Calcutta is the only public asylum in Bengal which could now be notified under the Act, and the consequence is that for the present, at any rate, the provisions of sections 7—11, if they become law, will apply to Calcutta alone, and to such municipalities within a convenient distance of it as Government may see fit to notify under section 3. The Committee which sat in 1890-91 to consider the question of removing the Calcutta Leper Asylum found that the number of pauper lepers in Calcutta in September, 1890, was 365, and it may be assumed that the number at present is about the same.

[*Mr. Bourdillon.*]

"In Bombay proposals were made so long ago as 1883 for the segregation of pauper lepers, but it was not till 1889 that active measures were adopted to seclude lepers of this class. In that city a resort to legislation was unnecessary, as the existing laws empowered the Local Government to declare a place to be a leper asylum, and to declare black leprosy to be an infectious disease dangerous to life, and Resolutions to this effect having been passed by Government, the Health Officer of the Port of Bombay was able, under Bombay Act VI of 1867, to cause to be conveyed to a house of detention and there to be detained any person suffering from black leprosy. In 1890, Sir Dinshaw Manockjee Petit contributed the sum of one lakh of rupees towards the scheme on certain conditions, and another lakh of rupees having been raised by the indefatigable exertions of Mr. Acworth, the Municipal Commissioner, and a strong Committee, a site was selected and work commenced on the 19th August of that year. By the 17th June, 1891, the buildings were completed and occupied, accommodation being provided for 270 lepers in the dry and 250 in the rainy season. The asylum is maintained at the joint cost of Government and the Bombay Corporation, and according to my information it has proved a most unqualified success. The streets of Bombay are cleared of the miserable lepers who used at one time to infest them, and those poor sufferers are well cared for and supplied with all reasonable comforts in large and healthy quarters. I have myself visited the institution, and gladly take this opportunity of again recording my admiration for the work done—a sentiment which I believe to be shared by every visitor to the place, and I have no hesitation in saying that, if every member of this Council had enjoyed a like opportunity, this Bill, in so far as it aims at providing similar institutions for Calcutta and Bengal, would be passed without a dissentient voice.

"I have now to move that the Bill be introduced in Council: I will only urge once more that the measure is admittedly tentative and cautious, and that it is believed to command the general approval of all classes of the community: it embodies no scheme for the general arrest and incarceration of lepers: its provisions, so far as pauper lepers are concerned, will be confined to municipal towns, for the lepers found in which a suitably equipped Leper Asylum has been provided, and for the present there is only one recognized public Leper Asylum in the Province. Lastly, those provisions of the Bill which regulate the trades of lepers, and which, on the passing of the Bill, may

be enforced in any municipality as soon as proper bye-laws have been passed, have, it is believed, been fenced about with all the safeguards necessary to prevent abuses and persecution on the one hand, and on the other hand to protect the public as far as may be from the risk, whether real or imaginary, of contracting a disease which has by all nations and in all ages been regarded with peculiar loathing and abhorrence."

The Motion was put and agreed to.

The Hon'ble MR. BOURDILLON also applied to the President to suspend the Rules for the Conduct of Business.

The Hon'ble THE PRESIDENT having declared the Rules suspended—

The Hon'ble MR. BOURDILLON introduced the Bill, and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accordingly.

CALCUTTA AND SUBURBAN POLICE ACTS, 1866, AMENDMENT BILL.

The Hon'ble SIR JOHN LAMBERT moved that the Bill to further amend the Suburban Police Act, 1866, and the Calcutta Police Act, 1866, be referred to a Select Committee consisting of the Hon'ble MR. COTTON, the Hon'ble MAULVI ABDUL JUBBAR KHAN BAHADUR, the Hon'ble BABU SURENDRANATH BANERJEE, the Hon'ble MR. GHOSE, the Hon'ble MAULVI MUHAMMAD YUSUF KHAN BAHADUR and the Mover.

The Hon'ble BABU SURENDRANATH BANERJEE said:—"With your Honour's permission I desire to make a few observations upon the Bill, which is now about to be referred to Select Committee. I must say that I cannot approve of the principle of the Bill in the shape and form in which it has been presented to us. I object to section 5 of the Bill and the principle which underlies that section. I object to the enlargement of the powers of the Police contemplated under that

[*Babu Surendranath Banerjee.*]

section. I am sorry to find myself in this matter in opposition to the hon'ble member to my right (MAULVI MUHAMMAD YUSUF), who, when the Bill was introduced at the last meeting, was not only pleased to speak in support of its provisions, but even went to the extent of observing that it did not go sufficiently far. My contention is different. My contention is, that the Bill goes a great deal too far. That it goes further than what is safe for us as a Legislature to provide, that it involves a dangerous principle, that it contains a menace to the interests of personal liberty held out in the name of Purity and Morality. I do not wish to be misunderstood. I am friendly to the Purity party, and to the movement which that party have inaugurated in this city. I sympathize with their aims and aspirations. I think they are doing a noble and a splendid work. I will even go further and say that no right-minded person, feeling the least concern in the well-being of the youthful section of the community, can withhold from them the tribute of his respect and admiration; they desire to place a lofty ideal of purity before our young men, and they wish to save them from those temptations to which they are specially exposed in a city like Calcutta. But great as may be my respect for the devoted men connected with the work, unstinted as may be the measure of my admiration for their ardour and self-sacrifice, I feel even a greater degree of solicitude for the maintenance of the rights of personal liberty against the abuse of power. I hope I shall not be accused of importing into this Council a new spirit, so far as our present deliberations are concerned, if I venture to affirm, even in the presence of the Hon'ble SIR JOHN LAMBERT, that the one department of the State which gives the least satisfaction is the Police; that it is capable of considerable improvement, specially as regards the material with which the subordinate ranks of the Police are manned. And yet it is gravely proposed under section 5 of the Bill to confer upon police officials, above the rank of constable, the power to arrest without warrant any person who is presumed in their presence to be making solicitations to immorality. I say that this is a dangerous power to confer upon subordinate police officers. Why, even in England, the exercise of this power has been attended with grave abuse. Hon'ble members will remember the case of Miss Cass. Here was a respectable young lady arrested by a police constable, hauled up before a Police Magistrate, and ignominiously placed upon her trial upon a charge than which it is impossible to conceive a fouler charge as

against a young lady. Thanks to the spirit of British justice which prevails in England, she was acquitted. The police constable got his dues. He was tried for perjury, was convicted, and sentenced to imprisonment. This happened in England, in a country where public opinion is strong, where it affords a sufficient safeguard against the extravagances of power, and where the Police are remarkable for their discipline, their devotion to duty, and their freedom from corruption.

"If, under these favourable conditions, a case like this could occur in England, what may we not expect in a country like India, where the Police is what it is, and where public opinion is feeble even to the verge of impotency? What is the justification for this section? The hon'ble member has himself told us that so far as he is personally concerned, he does not think the evil complained of has assumed grave proportions. I may be allowed to premise. I think I do him no injustice if I assume that if the hon'ble member was left to himself, if he was left to his own unaided impulses, he would not have recommended a provision like this for the consideration of the Council.

"The justification of the Bill is therefore to be sought for, as the hon'ble member himself has told us, in some representations made by certain respectable Native and European gentlemen. I have had an opportunity of discussing the matter with one of the most influential of these gentlemen—the Hon'ble SIR ROMESH CHUNDER MITTER, and I have his authority to say that he strongly condemns this provision of the Bill; he said that he did not want such a provision; that his party did not want such a provision; that they have not got what they wanted, and their memorial fully confirms this view of the matter. I have before me a copy of the memorial which was presented to the Government. The memorial consists of 13 paragraphs, and of the 13 paragraphs, 7 are devoted to the question of the suppression of brothels in this city. The memorialists say that the law on the subject is inadequate; they pray for an enlargement of the provisions of the law in this respect, and they recommend that the Indian law on the subject should be placed upon the same footing with the English law. There is only one paragraph devoted to a request for the suppression of solicitations to immorality. The Bill does not say a single word in reference to that which constitutes the chief prayer, the burden, if I may so call it, of the memorial. But it introduces a matter, which is a

bsidiary matter so far as this petition is concerned. I will read this paragraph om the memorial:—

'That your memorialists beg also to point out that there is no provision in the Calcutta olice Act for dealing with open solicitations to immorality, and your memorialists pray that ch solicitations may be made distinctly punishable by an enlargement of the scope of ction sixty-eight of the said Act, which deals with indecent behaviour, or of section sixty-six the said Act, which provides against sundry public nuisances, or such otherwise as to your onour may seem fit.'

"It will be seen from the extract which I have just read that the procedure which is followed in the Bill is not the procedure which they recommend. They pray for an enlargement of section 2 of Act II of 1886, which has superseded section 68 of the Calcutta Police Act. They pray for an enlargement of that section, and not for an enlargement of the powers of the Police, and I think all that it is necessary to do is to add an explanatory note regarding the meaning of the words 'indecent behaviour,' so that they should include solicitations to immorality. This, I think, will satisfy the memorialists, and it is certainly the view of the Hon'ble SIR ROMESH CHUNDER MITTER. These and other matters will no doubt receive the earnest attention of the Select Committee, and I hope and trust that they will see their way to omit section 5 of the Bill altogether. In the endeavour to promote morality, let us not jeopardise the interests of personal liberty. But should the balance of opinion prevail against the view which I have ventured to put forward, I have yet another recommendation to make in this connection—a *via media*, which, I think, will reconcile conflicting opinions. I recommend that the principle of local option be recognised in this section, that the section should not be extended to any locality except upon the application of, say, a hundred or more of the most respectable inhabitants of the place, or of those who resort to it for business purposes. Without some such safeguard, I am afraid the section in its practical operation will be attended with great abuse: it will be a fearful instrument of oppression in the hands of unscrupulous men, and the Bill itself will awaken the gravest public dissatisfaction."

The Hon'ble MR. GHOSE said:—"I am afraid, Sir, this Bill will have to undergo very material modifications before it can be safely passed by this Council or before it can be accepted by the general public. It has already evoked adverse criticism in the columns of the public press, and I find myself

in entire sympathy with much of that criticism. If it was found necessary to invest the hon'ble member in charge of the Bill with additional powers in his capacity of Commissioner of Police, for the purpose of abating nuisances arising in connection with the existence of disorderly houses in respectable neighbourhoods, I should have heartily supported such a proposal. Then there is another evil which has sprung up of late years, and which is certainly not of indigenous growth— I allude to the ostentatious flaunting of vice in places generally resorted to by the public during their evening drive, but so far as I am able to see this Bill does not profess to deal with that. No doubt it would be a difficult matter to prevent persons of any particular class from going to places of public resort so long as they do not misconduct themselves; but at the same time I do not see that there is any difficulty in dealing with the class of men who import these women, and live upon their earnings. But the present Bill proposes to deal with the evil of solicitation in public places, and it proposes to confer upon the Police special powers to repress it. Now the question which first arises is this: Does this evil exist to such an extent as to call for special legislation? My hon'ble friend, the Member for the Corporation, has pointed out that the hon'ble member in charge of the Bill told us, when asking for leave to introduce the Bill, that, speaking for himself, he did not think this evil had attained any considerable magnitude in this city, and I came to the same conclusion, namely, that if the hon'ble mover were left to himself he would probably not have considered it necessary to introduce any special measure. But be that as it may, the present Bill proposes to confer the most plenary powers upon all police officers above the rank of native constable in order to enable them to charge any woman with the offence of solicitation and to arrest her, if necessary, without any complaint whatever having been made by anybody. I am strongly opposed to any such measure. I believe it will lead to a system of wholesale and habitual blackmailing, and, as will not unfrequently be the case, to gross outrage and oppression towards respectable women of the humbler classes who may be charged with this offence.

"The higher and more opulent classes may be safe enough, but how about the poorer classes? Suppose a poor woman of perfect respectability, who is walking along the streets, stops for a moment to speak to a male friend or acquaintance, or even accosts a stranger, to direct her on her way to a

particular place, and that she is watched by a police officer from the opposite side of the road; now if this Bill is passed into law, there will be nothing to prevent the police officer, if he were dishonest, from making the grave charge that she had been committing this offence? What would be the position of a respectable young woman under these circumstances? The question is not whether she would be eventually able to prove her respectability and innocence, but the shame and horror of such a charge would be overwhelming, and I think hon'ble members will agree with me that most respectable young women would submit to part with anything they possessed rather than let it be known that they had even been suspected of such conduct. It will be idle to say that no such cases are likely to occur.

"My hon'ble friend, the Member for the Corporation, has pointed out that such cases have happened even in England, and he has alluded to the case of Miss Cass, who fortunately was able to conclusively disprove the charge brought against her. But it would be impossible to exaggerate the horror of her position when she was charged with this offence, and the agonies of shame she must have suffered during and for a long time after the trial was over. You cannot even breathe upon the reputation of a woman, however lightly, without leaving some stain behind, and it seems to me that the blame and the stigma of such a charge would long cling to her, even after a triumphant acquittal. There is nothing on earth which could afford any adequate compensation to a woman who has been subjected to such an outrage. But in the case of a complaint you have some safeguard—you have, at any rate, some person who will be responsible for initiating such proceedings, and who, in the event of the charge being a false one, could be prosecuted under the Penal Code. You propose to do away with even that safeguard, so that if the woman succeeds in proving her entire innocence, all that the police officer has to say is that he made a mistake, but that he really believed she was soliciting. Now I respectfully submit that this is a state of things which the Legislature ought not to countenance.

"I am speaking now not on behalf of any particular class. If the Bill is passed into law, it will affect Europeans and Indians alike. There is a large and growing class of shop-girls in this city, European and Eurasian, who will be affected by this measure just as much as their Indian sisters, and when they come to realise the situation, I apprehend that the European and

Anglo-Indian Defence Association will have something to say on the subject. But then it is said that respectable men ought to be spared the trouble and annoyance of having to appear in Court in connection with such cases. I confess I was astonished when I heard this. Are we seriously asked in this Council to have a more tender regard for the susceptibilities of men, however fastidious or squeamish, than for the overpowering sense of shame and for the irreparable wrong that may be caused to innocent women under your present proposal? I trust that the chivalry of hon'ble members will rebel against such a proposition.

"I have heard with very great pleasure that the Hon'ble SIR ROMESH CHUNDER MITTER, at least, has seen the danger to which this measure is liable. For my part, whenever any measure is introduced into this Council for the purpose of enforcing decency and order, I shall always be able heartily to approve of it. But with regard to the present Bill, I see in it elements of grave danger and abuse, and I feel it my duty to point it out at this the only stage at which the principle of a measure can be discussed. I trust the hon'ble member in charge of the Bill and others who support it will not allow their hands to be forced by a number of estimable and well-meaning, but utterly unpractical persons, who still seem to entertain a childlike faith in the exploded doctrine that immorality can be suppressed by Act of Parliament. The social evil has existed in every age and in every country, and I do not believe that a problem, the solution of which has hitherto eluded the grasp of the wisest and most far-sighted statesmen, is likely to be set at rest by undertaking hasty, sentimental and dangerous legislation at the bidding of irresponsible persons."

The Hon'ble MAULVI MUHAMMAD YUSUF KHAN BAHADUR said:—"I have one or two observations to make. As regards section 5, I see that the police officers who have to take action under it must be officers above the rank of a constable, that is as it should be. The point which occurs to me is, whether it will be wise, and whether the balance of convenience or inconvenience points to the direction that police officers should take cognizance of the offence dealt with by this Bill without a complaint. As at present advised, I submit that it will be hazardous in the extreme, if police officers are allowed to take cognizance of this offence without complaint. What I mean by complaint is not a formal complaint to be lodged at the Police Court, for that course would amount to trifling with the Bill, and would frustrate and defeat the very object

of the Bill, which aims at a speedy and easy means to enable the party aggrieved to have his redress for the insult offered to him whilst the insult is fresh in his mind. What I mean by complaint is, information given orally at the very moment to the police officer who is authorised to take cognisance of the offence.

"The second observation which I have to make is this: I said on the last occasion that this Bill did not go far enough—an expression which has been repeated in a deprecating tone by one of the learned speakers. But the truth of what I said on that occasion has been fully borne out by the discussion that has even now taken place, and instances and illustrations which the hon'ble member who spoke last has given regarding the shortcomings of the Bill are sufficient to show how the Bill might be extended in its scope and object, and how its provisions might be made to go a little farther. Another instance which occurs to me is this: In a quarter of the town where respectable people live, a house might fall vacant; it might thereupon be hired by women of doubtful character, and they might, with some degree of publicity, so misbehave themselves that their acts would be an outrage on morality, and would offer temptations to innocent population. Gradually other houses in the locality might become vacant, and in course of time they might also come to be occupied by such women. This state of things should, if possible, be remedied, and I throw out as a suggestion, for the consideration of the Select Committee, whether or not opportunity should be taken, now that this Bill is before the Council, to provide some remedy for the evil which I have spoken of—an evil which, I submit, is not of a mere imaginary character, but which actually exists in real life not only in one quarter of the town, but in various quarters, and which respectable people, beyond any manner of doubt, really feel, but in respect of which there is at present no remedy, the case not amounting to one of public nuisance."

The Hon'ble SIR CHARLES PAUL said:—"It is always a matter of sincere gratification to me to listen to the fervid eloquence of my hon'ble friend, BABU SURENDRANATH BANERJEE, or to the silvery language of my respected friend, MR. LALMOHAN GHOSE. But on the present occasion, I may point out to this Council that all their eloquence is pointless, and that the many wise and proper observations which they have submitted have really been wasted. The motion before the Council is to submit this Bill, which was read in Council on

the last occasion, to a Select Committee, and the only issue which is open to any member of the Council on this occasion is to submit reasons and considerations why this Bill should not be so submitted to a Select Committee, or in other words, to show fairly and clearly, in order to reverse the opinion of the Council, which was impliedly expressed on the last occasion when they gave leave to read the Bill in Council, that there is no sufficient foundation for any legislative action.

"Now, it cannot be doubted for a single moment that these annoyances, in reference to which adverse criticism has been made, viz., these solicitations to immorality, are of a very disturbing character to society, and no one can be aware better than the hon'ble member in charge of the Bill of the existence of this nuisance. It is said, however, that the hon'ble gentleman made an admission on the last occasion that the nuisance had not grown to any very considerable extent. I apprehend that that observation might be perfectly true, but yet that observation would not remove the ground of the Bill. The ground of this Bill is to ascertain and enquire into the existence of the nuisance, and the object of the Bill is to check its growth, and to see that it does not grow to any considerable extent. This Council is constituted for the making of laws for the peace and good government of the country, and if that be so, I think a sufficient foundation has been laid by the Hon'ble SIR JOHN LAMBERT for the initiation of this measure; and as that is the only question now before the Council, I say without fear of contradiction that neither of the hon'ble gentlemen who have been heard on the other side have laid the axe to the tree at all; and that in fact their observations have been altogether misdirected.

"Now, as to the next set of propositions which my friends have thrown out, no doubt, with considerable warmth and force, and it does considerable credit to themselves, because every member of society should have a tender regard for the liberty of the subject, and those observations have my deepest and warmest sympathy. But here I must point out to your Honour and the Council that the view which they have taken is a mistaken one. We are now proposing that the Council should commit this Bill to the Select Committee, and any proposal as to the form which the Bill should take is merely a matter of procedure to be dealt with hereafter.

"The provisions contained in the Bill are, if I may so say, rough indications for the consideration of the Select Committee, and the gentlemen who will sit

on the Committee, particularly my hon'ble friend, MR. GHOSE, will be able to warm up his associates to a proper sense of their duty, and to show why any of these provisions should not be modified. Therefore, the second branch of both my hon'ble friends' observations on this occasion are irrelevant at present, and have nothing to do with the question whether the Bill should be submitted to a Select Committee.

"Then, as to the third point, it often occurs in this Council, and on one occasion His Honour the Lieutenant-Governor particularly called the attention of an hon'ble member who took objection to a certain measure. His Honour said that, if the hon'ble gentleman had taken the trouble to read the Bill before coming to the Council, he would have been able to assist the Council in their deliberations. So I say now that if the hon'ble gentlemen who have spoken on the present occasion had only read section 5 of the Bill, they would have seen that the Police are only to be empowered to arrest a person who is soliciting another to immorality, 'if the name and address of such person be unknown to him and cannot be ascertained by him then and there.' What is the difficulty? If any person of respectability should be arrested by a police officer on a charge of solicitation, what would be the difficulty in that person giving his name and address? What are the strong powers with which the Police are to be armed under this Bill? I further say that a great portion of the observations which have been addressed to the Council about the liberty of the subject would have been justified if the clause to which I have referred had not existed in section 5.

"I do not wish on the present occasion to anticipate the action of the Select Committee, the members of which are all very well conversant with the subject; they may take evidence on any point, or make any enquiries which they think fit. But I will just say one word about the absence of complaint. No doubt it would have been better if action should be taken upon complaint, but if any one driving on the course were solicited in this way, it would be very hard if he had to complain and dance attendance in the Police Court. If such a clause existed, and a formal complaint was necessary, the value of the Bill would probably be rendered *nil*. When you are passing a legislative measure, it should be passed in such form as to have full force and effect, but to pass it in a manner which will take away a good deal of its force would be to legislate in an imperfect way. I think that we should allow this Bill to be referred to a Select Committee."

[*Mr. Cotton.*]

The HON'BLE MR. COTTON said:—"I feel bound to make one observation with regard to the remarks which have fallen from the learned Advocate-General. It appears to me that he has gone out of his way to find fault with the procedure adopted by my hon'ble friends, the Hon'ble BABU SURENDRANATH BANERJEE and the Hon'ble MR. LALMOHAN GHOSE, in objecting to their comments on the Bill now before the Council. I must point out that under Rule 33 of the Rules for the Conduct of the Business of the Bengal Council, it is laid down that on the day when the motion is made for referring a Bill to a Select Committee, or on any subsequent day to which the discussion is postponed, the principle of the Bill and its general provisions may be discussed; and I do not think the observations of my learned friends went at all beyond the comments which they were amply justified in making on the principle of the Bill now before the Council and on its general provisions; and it seems to me that the hon'ble and learned Advocate-General was himself conscious that my hon'ble friends were not really exceeding the right of discussion, inasmuch as a very considerable portion of his own speech was devoted to discussing the principle of the Bill and its general provisions. If the principle of the Bill is not to be discussed when a Bill is referred to a Select Committee, then there is no time when the principle of a Bill can be discussed. On the occasion of the introduction of a Bill the measure has not been sufficiently long before the Council to enable hon'ble members to form a judgment upon it. If the discussion is delayed until the Select Committee has reported upon it, then all that devolves upon the Council is to consider the clauses of the Bill in detail, and I do not see where the opportunity will be afforded of discussing the principle of a Bill generally. It has always been the custom of the Council to discuss the principle of a Bill when it is referred to a Select Committee, and I trust that you, Sir, will be able to affirm that that custom is a sound and proper one.

"With reference to the criticisms to which this Bill has been subjected by my hon'ble friends, I desire to say that I think they have laid undue stress on the danger of oppression and abuse of its provisions. I think neither of my hon'ble friends have drawn sufficient attention to the fact that the powers conferred by the Bill are not vested in the hands of any police officer unless he is an officer above the rank of native constable; that is to say, those powers will only be exercised by officers in the position of head-constable, Sub-Inspector, Inspec-

tor, Superintendent, or it may be a European constable. If the hon'ble members consider that such powers as are proposed by this Bill to be exercised by police officers of standing and experience are dangerous, they are of course entitled to their opinion, but this I must say that if they object to these powers being exercised by officers of such position, then practically their contention will tend to weaken and emasculate all police administration. The object the Government had in framing this clause of the Bill was to provide the most ample safeguards to prevent the abuse of police powers, and with that particular object it is not proposed to confer any powers on ordinary police constables as is done in England. The rank and file of constables are withdrawn from the provisions of this section. It was to meet the objections we have just heard that this class of police officers was purposely excluded, and as the learned Advocate-General very justly observed, further safeguards are introduced in the Bill for the same purpose. Police officers who are empowered to exercise authority under this section cannot arrest any one for making solicitations towards immorality if such person gives his name and address. That, I conceive, is a very great safeguard. If any one objects to give his name and address, the mere fact of such objection places him under suspicion.

"There is another point to which I wish to refer, and that is, that these provisions against solicitation are not principally directed against the unfortunate women who may patrol the streets in order to earn a precarious and dishonourable livelihood. The number of such women in Calcutta, as I am informed, is extremely limited. The number of street-walkers, so great in London, is extremely few in Calcutta, and were their case only considered, I apprehend that the Government would not have embarked upon legislation. But there is a worse evil in this city, to an extent which is unknown in England, but may be paralleled on the Continent. The streets of this city are infested by male touts who introduce men to the dwellings of prostitutes, and it is mainly with a view to bring these men under the clutches of the law that this Bill has been framed.

"Lastly, I must say that I am surprised, and the feeling of surprise is mingled with some share of regret, that the endeavour of the Government to meet the wishes of the Associations who have memorialised the Government with a view to the suppression of immorality in this city, should not have been more cordially met by my hon'ble friends. The desire of

the Government is to comply, as far as possible, with the representations of the Associations to which I have referred. It was represented to the Government that the scandal of solicitation in Calcutta had become considerable, and that legislative measures were necessary to put it down. That representation seemed to the Commissioner of Police and to the Lieutenant-Governor to be a reasonable one, and in endeavouring to comply with it this Bill, which has unfortunately met with such opposition at to-day's meeting of the Council, was drafted. I hope and trust that the opposition raised to-day will be suitably answered, and that our deliberations in Select Committee may succeed in obviating the objections which have been taken; but if it should appear that the safeguards which the proposed section contains are really insufficient to prevent abuse and oppression, then I am convinced that the Government and this Council will not hesitate to adopt such further safeguards as may be found necessary and expedient. The only desire the Government has in introducing this Bill is to take steps in response to the representations made to the Government—to take steps, I say, for the prevention of open acts of immorality known as solicitation, and in accomplishing this object I trust that the Government will receive the co-operation of all the members of this Council."

The Hon'ble MR. DUTT said:—"I have listened with considerable interest to the discussion upon this Bill, and after giving it my best consideration, I still think there is considerable force in the objections which my friends, the Hon'ble BABU SURENDRANATH BANERJEE and the Hon'ble MR. LALMOHAN GHOSE, have taken against section 5 of the Bill. As, however, the last speaker, the Hon'ble MR. COTTON, thinks that that section will receive careful consideration at the hands of the Select Committee, I do not wish to dwell upon that point. There is another matter to which I wish to draw the attention of the Select Committee, and that is, that in one respect the Bill does not go far enough. I understand that the memorial from which the Hon'ble BABU SURENDRANATH BANERJEE has read dwells mostly upon the subject of brothels in this town, and it is a matter of serious complaint that in the northern portion of this town and in many other parts of Calcutta, houses occupied by public women are a public nuisance. I think it was the main object of the memorialists to ask for protection being given against the annoyance to which the respectable inhabitants are subject day after day and night

after night. It is very frequently the case that public women in this town, often in respectable neighbourhoods, cause annoyance by loud singing and objectionable behaviour, and as far as I am aware, no adequate protection is given in such cases; and as a resident of this town I can add my testimony to that of the memorialists, that no adequate protection is afforded against such annoyance.

"I hope that either in the Select Committee or in our meeting in Council after the Report of the Committee has been submitted, the provisions of this Bill will be so far extended as to compel the residents of houses of ill-fame in this town to behave in an orderly manner. In most European towns the inmates of such houses are compelled to live in a decorous and orderly way, and that I think is what the memorialists have asked for in respect of Calcutta. I am not sure whether the Select Committee have power to extend the scope of the Bill so far, or whether it would be the work of the Council after submission of the Select Committee's report, but this being the main object of the memorialists, I mention it in order that it may be taken into consideration."

The Hon'ble MAULVI SERAJUL ISLAM KHAN BAHADUR said:—"I happen to be a member of the Purity Society, and took part in the action which the Society has taken in this matter, and I am bound to say that this Bill does not provide really and mainly what we want, namely, the suppression of brothels; and therefore I agree with the last speaker, that the Bill ought to be enlarged to that extent. With regard to section 5, I agree with my hon'ble friends that it is likely to prove an engine of oppression to the public; therefore there ought to be more safeguards than are provided in the section. If that is done, I shall have nothing to say against the principle of the Bill."

The Hon'ble SIR JOHN LAMBERT said:—"After what has fallen from the learned ADVOCATE-GENERAL and from the Hon'ble MR. COTTON on this occasion as regards the merits of the Bill—observations with which I entirely agree—it seems to me unnecessary at this time to refer at any length to the objections which have been brought forward by the Hon'ble BABU SURENDRANATH BANERJEE and the Hon'ble MR. LALMOHAN GHOSE. The chief point of the objections now urged against the provisions of this Bill is to be found in the fact that the Police are to bring up these cases into Court without a complaint. No

doubt that is unusual, and the matter is open to discussion and consideration; but my present view is that, if that objection prevails, then the Bill will be inoperative, and it will be far better not to bring this Bill upon the Statute Book, and I would recommend that the Bill be withdrawn. I shall be prepared upon a future occasion to give my reasons for holding this opinion. The objections which have been made in this Council Chamber and outside will receive fitting attention when the Bill comes before the Select Committee. The remarks which have fallen from the Hon'ble Babu SURENDRANATH BANERJEE and the Hon'ble MAULVI MUHAMMAD YUSUF will be considered in Committee; and to ensure that these hon'ble members may have the fullest opportunity of putting forward their views, I beg to move that, with their permission, their names may be added to the names already proposed for the Select Committee."

The Hon'ble THE PRESIDENT said:—"With reference to what has been remarked by the Hon'ble MR. COTTON with regard to the observations which fell from the Hon'ble the Advocate-General, I do not think there is really any such difference of opinion between them as might at first sight appear. I do not understand that the Hon'ble the Advocate-General intended to deprecate any discussion of the principle of the Bill on this occasion. The object of his remarks was to point out that this was not the occasion for the discussion of the details of the Bill, as they would be considered in Select Committee, and this remark applies more particularly to hon'ble members who will serve on the Select Committee, and will have an opportunity there of pressing objections and suggesting amendments. I myself would go a little farther, and would say that I would not deprecate any hon'ble member expressing his views even on any details of the Bill—not, indeed, discussing these at length or assuming that they are not liable to be amended; but it is for the convenience of the Council that we should know that there are certain details to which he could not give his assent, or that he should suggest any necessary safeguards which would in his opinion effectually carry out the objects of the Bill. It seems to me that the hon'ble member in charge of the Bill has met the difficulty by adding the two hon'ble members who have discussed the details of the Bill to the Select Committee, where they will have full opportunity of expressing their views.

"With regard to what has been remarked by the Hon'ble MR. DUTT and the HON'BLE MAULVI SERAJUL ISLAM, I should explain that there is some misunder-

standing as to the object of the memorial to which reference has been made. That object is not, as the two hon'ble members supposed, to suggest that greater power should be taken to put down brothels, which could be shown to be nuisances, or against which any objection could be urged by persons residing in the neighbourhood on account of annoyance caused by the inmates. The correspondence between this Government and the Government of India, which contains two important reports by the Hon'ble SIR JOHN LAMBERT, shows that the Police have complete power to deal with cases of that kind, namely, that where objection is made by the neighbours that a brothel is a nuisance, or that annoyance is caused thereby, the Police have not only the power, but the power is fully exercised, of putting down the nuisance. The object of the memorial in question was that brothels should be suppressed, even if no annoyance or nuisance is complained of; that the mere fact of it being proved that a place is used by people who lead immoral lives as a brothel should be sufficient to set in motion the power to turn out the inmates, and thus put a stop to the nuisance. That is a proposal quite different from what has been discussed in this Council, and I doubt if hon'ble members would support that view. I may say at once that the Government has been unable to support it, and I think it would be going too far to enlarge this Bill by giving a power of that kind."

The Motion was put and agreed to.

The Council adjourned to Saturday, the 23rd instant.

CALCUTTA;
The 4th March, 1895.

GORDON LEITH,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Reg. No. 920G.—300—5-3-95.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 *and* 1892.

The Council met at the Council Chamber on Saturday, the 23rd February, 1895.

Present:

The Hon'ble Sir Charles Alfred Elliott, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The Hon'ble Sir Charles Paul, K.C.I.E., *Advocate-General.*

The Hon'ble H. J. S. Cotton, C.S.I.

The Hon'ble Sir John Lambert, K.C.I.E.

The Hon'ble D. R. Lyall, C.S.I.

The Hon'ble J. A. Bourdillon.

The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.

The Hon'ble F. R. S. Collier.

The Hon'ble C. E. Buckland.

The Hon'ble C. A. Wilkins.

The Hon'ble Romesh Chunder Dutt, C.I.E.

The Hon'ble Surendranath Banerjee.

The Hon'ble L. Ghose.

The Hon'ble Maharaja Sir Luchmessur Singh Bahadur, K.C.I.E., of Darbhanga.

The Hon'ble Maulvi Serajul Islam Khan Bahadur.

The Hon'ble W. C. Bonnerjee.

The Hon'ble J. G. Womack.

The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.

THE LEPERS BILL.

The Hon'ble Mr. Bourdillon moved that the Bill to provide for the segregation of pauper lepers, and the control of lepers exercising certain trades, be referred to a Select Committee consisting of the Hon'ble Sir John Lambert, the Hon'ble Mr. Lyall, the Hon'ble Mr. Wilkins, the Hon'ble Babu Surendranath Banerjee, the Hon'ble Maulvi Muhammad Yusuf and the Mover. He said:—

"I have ascertained that all the gentlemen named are willing to act on the Select Committee, and I trust that after the remarks which I made at the

last meeting of the Council, the principles of the Bill may be accepted, and the Select Committee may be entrusted with the duty of working out the details."

The Motion was put and agreed to.

THE LAND RECORDS MAINTENANCE BILL.

The Hon'ble MR. BUCKLAND moved that the Bill to provide for the maintenance of Records of Rights in Bengal, and for the recovery of the cost of Cadastral Surveys and Settlements be referred to a Select Committee consisting of the Hon'ble MR. LYALL, the Hon'ble MR. WILKINS, the Hon'ble MAHARAJA OF DARBHANGA, the Hon'ble MAULVI SERAJUL ISLAM, the Hon'ble MR. DUTT and the Mover.

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I beg to move as an amendment to the motion which has just been laid before the Council that the consideration of this question be postponed; and that pending the reference of the Bill to the Select Committee, the reports of the High Court and of the several public bodies which have been received by the Government, be circulated among members. This is a question of the gravest importance; it has excited a considerable measure of interest and attention, and I think members ought to be placed in possession of all the papers which have been received before they are called upon to give their opinion upon the Bill. I take it that this is the first legislative proposal in connection with what is known as the Bihar Cadastral Survey."

The Hon'ble THE PRESIDENT said:—"I am sorry to interrupt the hon'ble member, but I must point out that it is not open to him to move an amendment at this stage, as he has not given notice of it. The motion before the Council is, that the Bill be referred to a Select Committee, and it will be in his power to vote against that motion. But any amendment which he wished to put should have been submitted beforehand, and brought on the Agenda before it could be considered by the Council."

The Hon'ble BABU SURENDRANATH BANERJEE continued:—"I do not exactly wish to move an amendment, but I would like to suggest that the consideration of the matter be adjourned. If I am in order that would be the motion

which I would like to move for the consideration of the Council. I was going to say that it is impossible to speak of the Bihar Cadastral Survey without adverting for a moment to the feeling which it evoked when it was first started some two or three years ago. That feeling has not yet subsided, and the measure is one which has met with universal and emphatic condemnation among all sections of the community. Neither the friends of the zamindars nor the friends of the raiyats can be persuaded to approve of the measure. Neither the zamindars nor the raiyats want it. If they want it, it is open to them under the provisions of the Bengal Tenancy Act to call for a record of rights. The highest officials in the land, having the widest experience of the Province, have condemned the measure. I need only read one or two extracts from some observations made by the Chief Secretary to the Government of Bengal a few years back in connection with the cadastral survey. He said:—

'It is well, no doubt, that an independent agricultural record should exist which neither zamindar nor zamindar's amla could transfer. Such a record is very desirable on many grounds, but I see no reason for supposing that it will bring with it a general agricultural settlement or any material increase of rural prosperity. And a similar result has not ensued in those provinces in India in which a survey and record of rights has been accomplished. It is not fair to compare the North-Western Provinces with Bengal, as other causes have led to the accumulation of wealth in our favoured province; but certainly I do not find any evidence to show that the record of rights has led to the enrichment of the peasantry of Upper India. And I am sure of this, that in Bengal, where, owing partly to the accident of the Permanent Settlement, it has hitherto been the policy of Government to interfere as little as possible with the people, the attempt to make a survey and record of rights will give rise to great local opposition and to excessive litigation, by which many persons who are now well off will be impoverished . . . The evil, I think, will outweigh any administrative advantages derived from it. I venture also to think that most persons who are competent from their knowledge and experience of these provinces to form an opinion on the subject will be found to agree with me in this deliberate conclusion, that a survey and record of rights, if it is calculated to settle disputes where they already exist, is equally calculated, where they do not, to call them into existence.'

"I think the public verdict is, that the evil will greatly outweigh the good to be derived from the survey. The survey is calculated to sow the seeds of dissension between zamindar and raiyat, to foster litigation, and to let loose a class of low, under-paid amins among the most helpless and defenceless section of the community. Further, it will be a matter of considerable expense, for the Bill provides for the imposition of a cess. I will not enter into the

question as to whether the imposition of the cess is or is not consistent with the terms of the Permanent Settlement—that is a very wide question, but I do contend that it will be a grievous burden to impose upon the raiyats—more than what they can bear—more than what I venture to think they ought to be called upon to bear, having regard to the benefits, immediate and prospective, likely to be derived from such a survey. It was understood some three years ago, when the survey was started, that it was intended that the Government would bear a substantial share of the cost. Section 19 of the Bill provides for the apportionment of the cost, but that section is absolutely silent as to what proportion the Government should bear of the cost. I am sure that this is a matter which will engage the attention of the Select Committee. I desire to point out that when survey operations of a similar character were taken in hand in the Benares Division of the North-Western Provinces, which is a permanently-settled division, it was the Government that bore the entire cost of the survey. However that may be, I hope the consideration of the matter will be adjourned, and the Council will be in a position to discuss it in the light of the papers and reports which have already been received."

The Hon'ble MAULVI MUHAMMAD YUSUF KHAN BAHADUR said:—"As regards the request to postpone the consideration of this matter for a fortnight, I beg leave to submit that I agree with the hon'ble gentleman who has last spoken, but I put forward the proposition not in the light of an amendment, but as one likely to offer facilities in the consideration of the subject-matter of the Bill, and to promote the due consideration thereof, regard being had to the gravity and importance of the measure. When this Bill was before the Council on the last occasion it was decided that public opinion should be invited, and no doubt such opinions have been sent in, because we have seen some of them in the public papers; but those opinions, although they are printed in the public papers, are not in a form convenient for the members of the Council to consider along with this Bill. I submit that it is a practical suggestion and a sound one, that papers in connection with a Bill before the Council, which have been received after the Bill has been read in Council, should be furnished to the members of the Council as soon as they are received. I have had very great difficulty in informing myself upon the points upon which opinions have been offered to the Council, and how far those opinions are relevant or sound with reference to the various provisions of the

[*Maulvi Muhammad Yusuf Khan Bahadur; the President; Mr. Buckland; Mr. Lyall.*]

Bill. I therefore support the request that has been made to adjourn this matter for a fortnight. Of course, if it is decided to proceed with this Bill, I shall make such observations upon the general provisions of the Bill, and as regards its details, as I have been enabled to form my opinion upon from such crude materials as I have been able to put together and gather or collect in connection with the question."

The Hon'ble THE PRESIDENT said:—"Finding that the feeling of the Council, as expressed by the Hon'ble BABU SURENDRANATH BANERJEE and the Hon'ble MAULVI MUHAMMAD YUSUF, and supported by other members who have spoken to me, is in favour of adjourning the discussion, I am prepared on the part of Government to agree to it. I think it would be a great pity, if in the minds of members there was any feeling that this question was rushed or hurried more than was desirable. At the same time I must remind them that it is not the ordinary practice to submit papers of this kind to the Council before the passing of the motion which we have met to pass to-day. The papers, as far as they have come in, have been carefully studied by myself and by the hon'ble member in charge of the Bill, but they are mostly in reference to details. Undoubtedly they also contain remarks more or less bearing upon the principle of the Bill, and that being so, I have great pleasure in acceding to what I understand to be the general wish of the Council, namely, that we should defer the present motion till the next meeting of the Council."

The consideration of this Motion was accordingly postponed.

THE PUBLIC DEMANDS RECOVERY ACT, 1880, AMENDMENT BILL.

The Hon'ble MR. BUCKLAND presented the Report of the Select Committee on the Bill to amend the Public Demands Recovery Act, 1880.

THE BENGAL SANITARY DRAINAGE BILL.

The Hon'ble MR. LYALL presented the Report of the Select Committee on the Bill to facilitate the construction of drainage works for improving the sanitary condition of local areas.

[*The President; Maulvi Muhammad Yusuf Khan Bahadur; Mr. Bonnerjee; Maharaja Sir Luchmessur Singh Bahadur of Darbhanga.*]

ADJOURNMENT OF THE COUNCIL.

The Hon'ble THE PRESIDENT said:—"It was suggested by one hon'ble member that a fortnight would be required for the discussion of the Record of Rights Bill. I venture to think that if the papers are circulated at once a week will be enough. Considering the stage which we have reached and the amount of business before the Council, I think it would be desirable to take up the discussion next Saturday. I do not wish to press this against any strong feeling of the Council, but my advice would be that we should take up the discussion next Saturday. The papers will be circulated at once by the member in charge of the Bill."

The Hon'ble MAULVI MUHAMMAD YUSUF KHAN BAHADUR said:—"I ventured to make a request for a fortnight, but if Your Honour does not see your way to grant a fortnight's postponement, we shall accept a week's time. But a week's time might not be sufficient consistently with our other avocations to study the Bill, and these papers might require a longer time. If, however, Your Honour thinks it necessary that the discussion should come on this day week, I do not wish to press the point."

The Hon'ble MR. BONNERJEE said:—"I beg that this discussion should not come on till this day fortnight. The matter is one of very considerable importance, and will require study at the hands of every member of the Council, and the reports of the Select Committee that have been presented to-day will also require very careful consideration, and as the business is to come on one after the other, I do not think a fortnight's time is too long."

The Hon'ble THE PRESIDENT said:—"The Council will meet next Saturday. We will then take up the Bill to amend the Public Demands Recovery Act, 1880, and we will defer the discussion on the Record of Rights Bill to this day fortnight."

The Hon'ble MAHARAJA SIR LUCHMESSUR SINGH BAHADUR OF DARBHANGA said:—"I thank Your Honour on behalf of the Council for this concession."

The Council adjourned to Saturday, the 2nd March, 1895.

GORDON LEITH,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

CALCUTTA;
The 9th March, 1895.

Reg. No. 945G.—800—11-3-95.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 *and* 1892.

The Council met at the Council Chamber on Saturday, the 2nd March, 1895.

Present:

The Hon'ble Sir Charles Alfred Elliott, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The Hon'ble Sir Charles Paul, K.C.I.E., *Advocate-General.*

The Hon'ble H. J. S. Cotton, C.S.I.

The Hon'ble Sir John Lambert, K.C.I.E.

The Hon'ble D. R Lyall, C.S.I.

The Hon'ble J. A. Bourdillon.

The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.

The Hon'ble F. R. S. Collier.

The Hon'ble C. E. Buckland.

The Hon'ble C. A. Wilkins.

The Hon'ble Romesh Chunder Dutt, C.I.E.

The Hon'ble Surendranath Banerjee.

The Hon'ble L. Ghose.

The Hon'ble Maulvi Serajul Islam Khan Bahadur.

The Hon'ble J. G. Womack.

The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.

THE PUBLIC DEMANDS RECOVERY ACT, 1880, AMENDMENT BILL.

The Hon'ble Mr. Buckland moved that the Report of the Select Committee on the Bill to amend the Public Demands Recovery Act, 1880, be taken into consideration in order to the settlement of the clauses of the Bill. He said:—

"I propose on this occasion to make a few remarks with regard to our proceedings in Select Committee, as, when I laid the Report of the Committee on the table on the last occasion, I refrained from doing so then. We met several times, and I think I may say that we discussed the Bill most thoroughly. We were unfortunately deprived of the presence of the Hon'ble the Maharaja of

DARBHANGA owing to his illness, and the Hon'ble the MAHARAJA OF GIDHOUR was unable to be present at all our meetings. But I think I may fairly say that every side was fairly represented and every point discussed, and the Hon'ble MR. LALMOHUN GHOSE gave us the benefit of his advice and criticism very fully. The Report of the Select Committee, which is laid on the table, has been purposely made pretty full, and it will not be necessary to advert to every one of its paragraphs.

"There are a number of amendments to be considered to-day, so that I shall not take up the time of the Council by going over the ground now more than I can help, for we shall have to deal with each matter subsequently in considering those amendments. (There are some important changes in the Bill which have not been made the subject of amendments; for instance, the important changes in the section of definitions. We say in our Report that the proceedings under Act VII (B.C.) of 1880 have hitherto been mainly carried out, under the general control of the District Collector, by an officer specially appointed for the purpose of performing the functions of a Collector. The Select Committee were aware that there had been much trouble and confusion in times past, (which necessitated the passing of a short amending Act), with regard to the meaning of the word 'Collector' in the original Act. We now propose that the law should conform with the ordinary practice, and we have therefore only defined two words, namely, 'District Collector' and 'Certificate Officer,' and our object has been throughout the Act to preserve the whole power of control and supervision in the District Collector, leaving the main work to be done by the Certificate Officer, reserving at the same time to the District Collector power to do the work of the Certificate Officer if he chooses.) We have also defined 'local authority' for certain purposes under section 7(*g*), the object being to allow payments which are made under leases of pounds, for instance, to be recovered as a public demand: they are public demands in every possible sense of the word. In section 6, we have made certain changes to make it correspond as exactly as possible to section 15. Section 6 refers to the two particular kinds of demand referred to in section 5, namely, when an estate or tenure has been sold for its own arrears and the sale-proceeds are insufficient to liquidate the same, or when arrears of revenue due from a farmer are not paid on the latest date of payment. The special feature in respect of these two kinds of demand has always been preserved, that before the demand can be contested by a civil suit, the

amount stated to be due must be paid. With the exception of this feature sections 6(*2*) and 15(*1*) (which refers to all other public demands) have been made now as like as it is possible to make them. Section 11, which allows the Certificate Officer to attach moveable property when he is satisfied that the property of the judgment-debtor is likely to be concealed, or removed or disposed of, has also been considered from another point of view. We considered whether the principle of section 256 of the Code of Civil Procedure, which allows such attachment in cases under Rs. 1,000, should not be introduced, but we came to the conclusion that it was not necessary to confer such a power under this Bill. The present law gives, in our opinion, sufficient power of attaching moveable property when required. Under the law the District Collector must be satisfied of the judgment-debtor's intention to remove his property, &c.; but we have thought it right that the Certificate Officer should record his reasons before attaching moveable property. In section 12(*2*) we have provided for the verification of petitions under certain sections of the Civil Procedure Code, the object being to discourage frivolous objections and make the petitioner liable to the penalties attaching to false verifications. We have similarly in the proviso to section 12 provided that the Certificate Officer may require a deposit to be made before entertaining a petition of objection. The question was whether we should make this obligatory or not, but on consideration we thought it sufficient to give the Certificate Officer power to require a deposit to be made, the object being, of course, to prevent, as far as possible, frivolous and merely dilatory objections.

"Then, in the proviso to section 13, we have somewhat altered the provision, which was in the Bill referred to the Select Committee, to allow the Certificate Officer to refer hard cases to the Civil Court. What we have done is to allow the Certificate Officer to make an order suspending proceedings before himself for a period of six months. That will give the judgment-debtor an opportunity of going to the Civil Court. We have provided in a subsequent section that the judgment-debtor must, within six months, determine whether he will file a suit. If he does not take advantage of the order, then the certificate will become absolute. Similarly, we have provided that if no suit is brought by the judgment-debtor under section 15 within six months, then the certificate will become absolute. This is provided for in section 16. In section 17, which states the grounds of cancelment or modification of a certificate

by the Civil Court, we have thought it right to allow certain grounds on which the Civil Court may be moved not only to cancel but also to modify a certificate, those grounds being that the amount was not due, or that the amount due has been paid and not credited. In section 18 we have taken power for a District Collector to re-transfer any petition transferred by a Certificate Officer, so as to allow the District Collector to order that it be heard and determined by the Certificate Officer. We think this is a power of control which may be very useful for the District Collector to possess, namely, to refer a petition back to the Deputy Collector who works as the Certificate Officer.

"In section 19 we have tried to make it clear that an appeal may be preferred from an original order of the District Collector to the Commissioner. We do not propose to interfere much with the appellate sections in the Act. It is not proposed to give two appeals—first to the Collector and then to the Commissioner. It was considered that one appeal to the District Officer, except when he deals with a case himself originally (and in that case one appeal to the Commissioner), would be sufficient; that in all cases the Commissioner should have power of revision, which is a very wide power, as it will enable the Commissioner to interfere with any order on the records which come before him. Then, in section 19, we have also provided that an officer appointed to perform the functions of a Certificate Officer shall, if authorised by the District Collector, with the sanction of the Commissioner so to do, exercise the appellate powers of a District Collector subject to the general supervision and control of the District Collector. Cases may possibly arise when, the Collector being away in camp, or over-burdened with work, it may be necessary in the interests of good administration to provide for the prompt disposal of appeals. There will be ordinarily an experienced Certificate Officer at head-quarters, and the District Collector should be allowed, with the sanction of the Commissioner, to authorise the Certificate Officer to hear appeals rather than allow them to accumulate and add to the already overburdened file of the Collector. It is a power which can only be exercised under the sanction of the Commissioner, and I think it ought to be allowed as a matter of administrative convenience. Section 21, which is the redemption section, provides for the payment of a penalty of one-tenth of the auction-price by a judgment-debtor who seeks to set aside a sale, and all we have done in this section is to add the words 'not less than one rupee.' I think this is a very small matter with which nobody need find fault.

[*Mr. Buckland.*]

"We have had an important discussion about section 21, because it appears to infringe at first sight the Act passed last year to amend the Code of Civil Procedure (Act V of 1894). The Report of the Select Committee states what is the difficulty about this section. We had some doubt whether we could override, so to speak, section 310A of the Code of Civil Procedure. But since the section was drafted we have found that under the Indian Councils Act of 1892 we have power, with the previous sanction of His Excellency in Council, to make changes in a law passed by the Council of the Governor General, and it also provides that any changes we make in a law passed by the Viceroy's Council shall not be invalid if His Excellency in Council subsequently sanctions them. This section with very small changes, which have since been introduced, was in the Bill laid before the Government of India last year, and so it may be fairly assumed that we have their permission to proceed with this section. There are two amendments on the agenda with regard to this section, particularly with reference to clause (*c*), which provides that if the deposit referred to be made within the said thirty days, the Certificate Officer may, if he thinks fit, pass an order cancelling the certificate and setting aside the sale. I am at liberty to say that the amendments will be accepted by the Government which suggest that instead of the words 'may if he thinks fit' the word 'shall' be substituted This will really bring the proviso into accord with section 310A of the Code of Civil Procedure, with only a small point of difference, and it will also be in accord with the language of section 174 of the Tenancy Act. We had thought that the words 'may if he thinks fit' might properly be introduced at this stage of our experience; that the obligatory word 'shall' was probably too rigid, and that it might somewhat tend to diminish prices obtained at sales. But after further reflection it is thought better to adopt the word 'shall' so as to bring it into accord with section 310A of the Code of Civil Procedure.

"In section 23(*2*) we have made changes in the wording to make it short. At one time the idea was that all the Chapters and all the Sections of the Civil Procedure Code which should apply to the enforcement of certificates should be set out at length in the Bill. The list of those Sections and Chapters as they appeared in the Bill, which was introduced on the 31st March last year, was a rather formidable one, and when the Bill was referred to Revenue Officers and Associations for criticism that list grew to even greater length. There were in

fact few sections of Chapters XIX and XX of the Code which it was not proposed to adopt for some reason or another. We have therefore by a few words made the procedure of the whole of those Chapters apply, as far as practicable, to certificate proceedings and to realization of the amounts recoverable thereunder. These general words are the words of the existing Act, but it will be my duty to move an amendment by the addition of a few words to provide for the omission of section 310A of the Code of Civil Procedure, because that section cannot stand compatibly with section 21 of our Bill.

"In section 33 we have taken advantage of the latest provision of the law regarding the service of notices by adopting, *mutatis mutandis*, section 45 of the last Land Acquisition Act passed in 1894. Section 33 now provides for personal service wherever it may be practicable on the judgment-debtor, for substituted service when the judgment-debtor cannot be found, or any adult male member of his family, and for alternative service by fixing a copy of the notice in certain specified places; and lastly, if the Certificate Officer shall so direct, the notice may be sent by post by a registered letter addressed to the judgment-debtor at his last known residence. Further than this we are not prepared to go. That enactment may be said to contain the collective wisdom of the Supreme Legislature on this particular point, and until some experience is gained, it seems very undesirable for us to attempt to improve upon it.

"I think I have now run over the principal sections of the Bill as they are affected by the Report of the Select Committee. I have been asked whether it is the object of this measure to make the procedure more drastic than it is now. I may safely say that that is not our intention. The origin of the amendment of this law was fully stated in this Council when the Bill was introduced, viz., that it had its rise from the judgment of the High Court in the case of Sadhusarun Singh *versus* Panchdeo Lall, which I daresay is pretty well known—at any rate to the legal members of this Council. The effect of that decision was to cause serious administrative inconvenience. It necessitated an appeal to the Commissioner of the Division at a distance, under the Revenue Sale Law, instead of to the officer on the spot, to set aside a sale. The effect of that decision was that only a certain number of sections of the Civil Procedure Code applied to the execution of decrees, and certificates had to be executed under the Revenue Sale Law. That was the origin of the amendment of Act VII (B.C.) of 1880. The first letter suggesting an amendment of the Act was submitted

to the Government of India in September, 1889, and this Bill has been the subject of discussion ever since. The object of the Legislature at present is to incorporate the result of the experience of the working of the Act which has been gained during the last fifteen years. There is no intention to make the Act more severe or more summary. The object is to take advantage of the experience which has been gained, and we think we have produced a more reasonable and a more workable measure. The first duty before me now is to move that the Bill be taken into consideration in order to the settlement of the clauses of the Bill."

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND also moved that the clauses of the Bill be considered in the form recommended by the Select Committee.

The Hon'ble THE PRESIDENT said:—"Before I proceed to call upon hon'ble members to move the respective amendments which stand in their names, I wish to state that the Government are prepared to accept the amendments which are numbered (6), (25), (28) and (29), and, therefore, it will probably be considered unnecessary for the movers of those amendments to adduce any arguments in support of them. With regard to some of the other amendments on the Agenda, we desire to be guided by the views of the Council and by the advice we may receive from our legal advisers, and as the discussions proceed the Council will be informed how far the Government can accept them, and how far the Government intends to oppose them."

The Motion was put and agreed to.

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, moved that at the beginning of section 2 the following be inserted:—

'This Act, so far as is consistent with the tenor thereof, shall be construed as one with Act XI of 1859, passed by the Governor General in Council, and Act VII of 1868, passed by the Lieutenant-Governor of Bengal in Council.'

He said:—"I may remind the Council that these words are to be found in the original Act, but they have been omitted from the present Bill, and I understand that the omission has been intentional. The Report of the Select

Committee, however, does not give any reason for the omission. I think some difficulty may be created in consequence of this omission. The Council will observe that, after the passing of the decision in the well-known case, which was referred to by the hon'ble member in charge of the Bill, it has been held both by the High Court and, I understand, also by the Board of Revenue that a judgment-debtor, whose property is sold under the Certificate Act, has no remedy under that Act, but that his only course is to appeal against the order of sale under section 2 of Act VII (B.C.) of 1868. The provisions of this Act are only made applicable to sales under the certificate by the inclusion of the words which have now been omitted from this Bill; so that if these words are now omitted, I am afraid that the only provision which gave a right of appeal will be removed, and a person whose property is sold will have no remedy left to him. It may be said that section 19 of the present Bill gives a right of appeal, but that section is only a re-enactment of section 16 of the Act, and it only provides for an appeal from any 'order' of a Deputy Collector, &c. It has been held that the word 'order' there does not apply to sales, but only to the orders mentioned in the previous section. Therefore the present section 19 of the Bill will not give any right of appeal to a person aggrieved by the sale of his property; and if the provisions of section 2 of Act VII of 1868 will not apply to orders passed under this Bill, there will be no remedy left. There is also another difficulty, namely, that the Bill makes no provision for the granting of a certificate to the auction-purchaser.

"Under the present practice the auction-purchaser gets a certificate under section 28 of Act XI of 1859, which is the section under which, by the Board's rules, a certificate is granted. But the provisions of that law are made applicable to the procedure of the Certificate Act by force of the words which have been omitted from the present Bill. Therefore, if these words are omitted, I am afraid that the provisions of Act XI of 1859 cannot be applied to proceedings under the Certificate Act, and there is no other provision under which a certificate can be granted to an auction-purchaser. Consequently, I submit that these words are very material, and ought not to be omitted. It is said that section 23 of the Bill makes all the provisions of Chapters XIX and XX of the Code of Civil Procedure applicable to certificate proceedings. Now, section 316 of that Code, which finds a place in Chapter XIX, makes provision for giving a certificate to a purchaser. I have great doubt whether

the concluding words of section 23 (*2*) do not limit the applicability of the procedure under Chapters XIX and XX of the Code of Civil Procedure to certain specified things, namely the enforcement of the certificate and the realization of the amount recoverable thereunder. These words also occur in section 19 of the original Act VII of 1880. It was held by the High Court that up to the stage of the sale the procedure of the Civil Procedure Code would apply and no further. The words of the present section do not give a wider scope, so that if you cannot avail yourself of the procedure of the Civil Procedure Code after the sale, you will have no power to grant a certificate to the auction-purchaser. Therefore, I submit that these words should not be omitted, and that if they are omitted, difficulties may arise in the working of the law."

The Hon'ble Mr. Ghose said:—"I think this is a very necessary and important amendment. I desire as a member of the Select Committee to take this opportunity of saying one word in order to explain my position in reference to this and other amendments that are to be moved to-day. It ought to be borne in mind that this Bill is of a very special character, and in order to correctly appreciate and form a proper estimate of its provisions, they have to be very carefully compared with the corresponding sections of the original Act and other Acts upon cognate subjects. Without such comparison it would be impossible to say whether the Bill makes any new departure, and, if so, whether such departure is a step in advance or the reverse. But we had to go rather rapidly through the Bill in Committee, as the time before us was very limited. We had, I believe, three or four meetings, and one of them I was unfortunately unable to attend on account of absence from town. I am free to confess, therefore, that certain matters escaped my attention which I should otherwise have brought to the notice of my colleagues. Under these circumstances, I shall feel it my duty to support such of the amendments before the Council to-day as may commend themselves to my judgment, although I may not have referred to them in my note of dissent.

"Coming to the present amendment, it has been pointed out by the hon'ble mover of the amendment that the High Court has held that, but for the existence of these words in section 2 of Act VII of 1880, a judgment-debtor would have no right of appeal against a sale under the

provisions of that Act. The learned Judges distinctly point out that it is only because by virtue of these words in section 2 of Act VII of 1880 you have to read the various provisions of the three Acts as if they were sections of one Act that the judgment-debtor is entitled to the benefit of section 2 of Act VII of 1868, which gives him a right of appeal to the Commissioner, and they have further held that sections 311 and 312 of the Civil Procedure Code do not apply to these cases. The result is that if you omit these words, you will leave the judgment-debtor without any right of appeal. And even if the matter admitted of any doubt, it is unquestionable that the deliberate omission of these words after the interpretation put upon them by the High Court would be a clear indication that it was the intention of the Legislature to deprive the judgment-debtor of the right of appeal. This in my opinion would be a distinctly backward step, and I therefore hope the Government may yet be able to see their way to accept this amendment."

The Hon'ble MR. BUCKLAND said:—"This is rather a technical legal subject, somewhat difficult to discuss in this manner. As far as I have been able to follow the arguments of the two learned gentlemen who have spoken, they are afraid that if these words are not restored in the Act, the judgment-debtor will be deprived of the right of appeal. That certainly was not the intention, and I do not myself see how the omission will have that effect. The object of omitting these words dates back from the time of Mr. Beames' connection with the Bill. In his first report he distinctly stated that 'the words by which Act VII (B.C.) of 1880 was directed to be construed as one with Act XI of 1859 and Act VII (B.C.) of 1868 have been omitted. The provisions necessary for making the certificate procedure independent and self-contained have been inserted in various sections of the Bill. The provision, however, that the powers given by the Act are to be deemed to be in addition to the powers conferred by any Act now in force, has been retained.'

"That was the object of the whole thing. The two Acts were to be made independent of each other, and we hold that the Bill before us is self-contained and amply sufficient for all practical purposes. I fail to see why it should be necessary to incorporate Act XI of 1859 with this Bill. The intention is that when a certificate has to be executed it should be executed according to the provisions of the Code of Civil Procedure. I fail to see why it is necessary that an auction-purchaser should be provided with a certificate under section 28 of

Act XI of 1859, to which the hon'ble mover of the amendment seems to attach so much value. A certificate under section 28 of Act XI of 1859 is intended, as far as I know, for the special purposes of that Act, and does not apply to sales in execution of decrees under the Code of Civil Procedure. It seems to me, therefore, that the hon'ble gentleman's argument, so far as it lays stress on the value of that certificate, is irrelevant; because, when sales take place under the Code of Civil Procedure in execution of decrees under this Bill, the auction-purchaser will be put in possession in the ordinary way without any such certificate.

"As for the point whether the judgment-debtor is deprived of any right of appeal, the statement has been made, and I am not prepared to say that it is erroneous, but I am not prepared altogether to admit it. I would rather hear the learned Advocate-General's opinion on the point. We have certainly incorporated the two Chapters of the Code of Civil Procedure with the full intention of allowing the judgment-debtor to have every right of appeal for the purpose of setting aside the sale, as is allowed under that Code. We have not cut off any rights which attach to an auction-purchaser under the Code of Civil Procedure, and I do not see why we should go out of our way to incorporate another Act merely for the purpose of giving some fancied right of appeal, which, as far as I can see, is unnecessary. But it is such a technical question that I confess I should like to have further legal opinion upon it. For my part I do not see that the insertion of the words in the amendment is necessary. We think the Bill is sufficient in itself, and that no object will be gained by incorporating Act XI of 1859 with this Bill, whereas by incorporating it there may be some risk of confusion."

The Hon'ble MR. LYALL said:—"I desire to say a very few words in defence of my action in the Select Committee in having agreed to the omission of these words. The subject was fully considered by the Committee, I fancy, on the day on which the Hon'ble MR. GHOSE was not present. We went through the Act carefully, and considered that the addition of the words was absolutely unnecessary. I desire to call the attention of the Council to the great difference between section 19 of the Act, which is to be repealed, and section 23 of this Bill, which we ask you to pass to-day. Section 19 of the Act did not incorporate the whole procedure of Chapters XIX and XX of the Code of Civil Procedure, but only certain sections of them, and those sections were understood for many

years to extend to sales as well as to the executions of decrees. But owing to the decision of the High Court, which was referred to by the hon'ble mover of the amendment, their scope was limited. The reason why I agreed to the exclusion of these words was, that as the section had now been amended by incorporating the whole of Chapters XIX and XX of the Code of Civil Procedure, the mention of Acts XI of 1859 and VII of 1868 was not now necessary. I do not think this amendment is necessary, and I believe the insertion of the words proposed will be more surplusage."

The Hon'ble SIR CHARLES PAUL said:—"I think that after the decision of the High Court, which has been referred to, it is very necessary to be careful. The Board of Revenue had decided previously that the provisions in respect to sales in execution of a decree would apply to the setting aside of sales under the Certificate Act, because a sale was not a sale until it was confirmed. But the High Court decided against such an interpretation; therefore it is necessary to be careful, and I accordingly propose one of two alternatives: either to state, as in section 23, that the procedure of Chapters XIX and XX of the Code of Civil Procedure shall, so far as it is applicable, be the procedure followed in execution proceedings to enforce such certificate, or that it shall be the procedure followed in execution proceedings in respect of such certificate. But the proposal that this Act shall be read as part of Acts XI of 1859 and Act VII of 1868, I think very objectionable. Every Act should stand by itself."

The Hon'ble MR. WILKINS said:—"I was of the same opinion as the Hon'ble MR. LYALL. All the members of the Select Committee who were present at the discussion thought that the inclusion of these words was altogether unnecessary; but now my opinion is modified to a certain extent by what has fallen in the course of the discussion, and I consider that it is necessary to put in some specific words to make it clear that there is no intention to deprive the judgment-debtor of the right of appeal, which he undoubtedly has."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I gather that there is a general unanimity of feeling that the judgment-debtor should have some remedy in cases of grave irregularity, and that in such cases he should be allowed to move for the setting aside of a sale. It is a matter which is attended with considerable difficulty. The words used by the High Court are as clear as words

can be. Mr. Justice Mitter observed that 'the only remedy of a judgment-debtor whose property has been sold in execution of a certificate issued under Bengal Act VII of 1880, and who has sustained substantial injury by reason of a material irregularity in publishing or conducting the sale is by way of an appeal under section 2 of Bengal Act VII of 1868'; and further on the Judges say:—'We think that by the force of section 2 of Act VII of 1880, the provisions in section 2, Bengal Act VII of 1868, became applicable to a sale under an execution issued upon a certificate made under Act VII of 1880.'

"The Hon'ble the Advocate-General himself admits that the matter is attended with considerable difficulty; and that being so, it strikes me that it would be only wise that we should retain the provision which it is now proposed to omit. If the sense of the Council is that the judgment-debtor should have a remedy, and if it is doubtful whether without these words he would have a remedy, I think it would be right and proper that these words should not be omitted from the Bill."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, in reply said:—"My object in moving this amendment is not that these two Acts should be incorporated with this Bill. If this is a self contained Act as the Hon'ble the Advocate-General seemed to think, and all the provisions necessary to confer the power of appeal are to be found in the Bill, I do not wish the Council to insert these words. But as I read the present Bill, I do not think it is a self-contained Act. Reference has been made by the Hon'ble MR. LYALL to Chapters XIX and XX of the Code of Civil Procedure, and to section 23 of the present Bill, but then Chapters XIX and XX, the provisions of which are made applicable under section 23 do not provide for any appeal at all. They deal only with execution proceedings and the setting aside of sales under section 311, that is to say, for irregularity. The appeal section is to be found in Chapter XLIII of the Code of Civil Procedure. Therefore, if these words are omitted, section 23 of this Bill will not provide a remedy, although the whole of Chapters XIX and XX be made applicable. I admit that if some words are inserted such as will give the judgment-debtor a right of appeal, there will be no necessity for the inclusion of the words which I have proposed; but if the right of appeal is not given clearly by any section of the Bill, then I think these words are necessary."

[*The President; Maulvi Serajul Islam.*]

The Hon'ble THE PRESIDENT said:—"I understand the view of the hon'ble the Advocate-General to be that a small addition to section 23 of the Bill, which he will be prepared to move when the occasion arrives, will satisfy the wish of the hon'ble member that provision should be made for an appeal, and that being so, I think we ought to be satisfied with the advice of our chief legal adviser."

The Motion was, by leave, withdrawn.

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, also moved that in sub-section (*1*) of section 5, for the words "an estate, tenure or any share of either" the words "a tenure or any share thereof" be substituted. He said:—

"I must confess that I rise with some hesitation and diffidence to move this amendment. I am aware that my amendment would be a new departure from the existing law, and that if the amendment is carried, it may affect the interests of the Government to a certain extent. Hence my hesitation. At the same time I am so much convinced of the justice of my amendment that I feel it my duty to submit it for the consideration of the Council. Under the provisions of this Bill and of the existing Act, it is a fact that a zamindari may be sold for arrears of revenue, and if the sale-proceeds are found to be insufficient to meet the Government arrear, the Government can now, under the provisions of this section, proceed against the person and other property of the judgment-debtor for the balance of the arrear due. This is also the provision of the existing law. But I submit that it will operate hardly upon the zamindar. Take, for instance, the case of a zamindari worth Rs. 25,000; it is put up for an arrear of Rs. 5,000 and is knocked down for Rs. 1,000. Every zamindari is hypothecated to the Government for its revenue, the Government revenue being the first charge upon it. The Government has a summary procedure under Act XI of 1859, otherwise called the Sunset Law, to realize its dues from such zamindari, and then when the property is sold by the Government, by the aid of its own machinery, the auction-purchaser gets the property free from all incumbrances created by the defaulting zamindar. That being so, if the price which the property fetches is inadequate, the zamindar ought not to be held responsible, and the Government should not proceed against his person and

other property for the balance of the arrears due. That appears to me to be unjust and inequitable. He loses his property; it is sold for an inadequate price; it may be on account of any irregularity which might have occurred in the sale: the zamindar should not be held liable for the balance of the arrear. The object of the amendment is to remove zamindari estates from the operation of this section."

The Hon'ble MR. BUCKLAND said:—"I think I may say at once that we cannot possibly accept this amendment. The hon'ble mover is aware that this has been the law for the last 15 years. All that he says is, that the poor zamindar ought not to be held responsible. He is aware that the interests of the Government may be affected if a zamindari is sold for an inadequate price and the Government dues are not paid up, but he would let the zamindar go, and leave the Government apparently no remedy at all. That is entirely a one-sided way of looking at the matter. This law, I believe I am right in saying, has been in force for a very long time. I said in my remarks on the Report of the Select Committee, that the two demands referred to in these sections 5 and 6 stand upon a different footing to the general list of public demands. They are taken from an old Regulation, and it would be subversive of a very sound principle if the change now sought were introduced. The object of the whole of the procedure is to recover the dues of the Government, and if a zamindar fails in paying the Government revenue and his estate does not fetch an adequate price, surely the hon'ble member is not prepared to say that the Government should be deprived of its dues. This procedure is the only means I am aware of of getting the balance of the arrears out of the zamindar. I think it would be hard if the Government were to be deprived of this power."

The Hon'ble MR. LYALL said:—"I desire to say a very few words in opposition to this motion. The hon'ble mover of the amendment does not propose to exempt tenure-holders from this liability, but only the owners of estates. In other words, he proposes to make the Government the only sufferer. There is another point on which the hon'ble member scarcely stated his case very fairly. He said that the auction-purchaser obtained the property free from all incumbrances, but that is only true to a certain extent because a zamindar is able to

create certain incumbrances against all purchasers, and thus to deprive the Government of its revenue. I oppose the motion as being entirely one-sided."

The Hon'ble THE PRESIDENT said :—" I agree with the last two speakers in thinking that this is not a motion which can be supported by the Government."

The Motion was, by leave, withdrawn.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in line 2 of sub-section (*2*) of section 6, for the words "six months" the words "one year" be substituted. He said:—

" If this amendment is accepted, the law will remain as it is at present. Under the existing law the judgment-debtor may file a suit in the Civil Court, for the purpose of contesting a certificate, within one year from the date of the service of notice, or within one year from the date of the determination of the objection, or from the decision of any appeal preferred by him to the revenue authorities. It is now proposed to reduce this term and to restrict, so far as time is concerned, the opportunities which the judgment-debtor has hitherto had for contesting a certificate. I have read very carefully the papers which have been circulated, and have listened very attentively to the hon'ble member in charge of the Bill, and I must say that I fail to see that any justification has been made out for the reduction of the limit of time. No complaint has ever been made against the operation of the existing law. This is a restrictive measure so far as the opportunities of contesting a certificate are concerned; and that being so, it is incumbent on the Government to bring forward the amplest justification for a provision of this kind, and I submit that no such justification has been made out. I hope that under these circumstances the existing period of one year will be retained."

The Hon'ble MR. BUCKLAND said :—" I think the hon'ble member has made a little slip. He says that under the present law a judgment-debtor may bring a suit within one year from the date of the service of notice, within one year from the date of a petition of objection, or within one year from the date of an appeal. If he will look at section 6, sub-section (*b*) of the existing law, he will find it stated that a judgment-debtor may at any time within one year after service upon him of such notice, as is mentioned in section 10, bring his suit.

Nothing is said there of the period of limitation running from the date of the petition of objection, or from the date of the appeal. We have in Select Committee extended in section 6 (*2*) the term from which the date of the right to appeal begins to run; what we have allowed by section 6 (*2*) is that the judgment-debtor shall have a clear period of six months, if he has filed a petition of objection, after the determination thereof, or if he has appealed after the decision of such appeal, within which to consider whether it is worth his while to prefer a suit. This suggestion emanated from the Board of Revenue with regard to section 15, and it is from that section that we imported it. I therefore cannot see any justification for allowing a longer period of time. The object should be to clear off work, and not to allow these cases to hang on. I think the judgment-debtor will have ample time to make up his mind whether he will bring a suit or not."

The Motion was, by leave, withdrawn.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that the whole of the proviso to sub-section (*2*) of section 6, marked (*a*), commencing with the words "has omitted to state" and ending with the words "that there was good reason for such omission, and" be omitted. He said:—

"The effect of this proviso is to place the judgment-debtor who goes straight to the Civil Court in a better position than the judgment-debtor who goes to Court after preferring an appeal to the Revenue authorities. The judgment-debtor who goes to the Civil Court may prefer whatever grounds of appeal he chooses, but the judgment-debtor who has once been to the Revenue authorities will not be allowed in his appeal to the Civil Court to prefer other grounds than those which he has already submitted to the Revenue authorities. There may have been an omission on the part of his legal adviser, but he is precluded from supplying the omission, except with the leave of the Court, and unless sufficient grounds are shown. The object of my amendment is to place both classes of judgment-debtors in the same position, and that not by restricting the right which the one possesses, but by placing both on the same footing of justice and freedom."

The Hon'ble MR. BUCKLAND said:—"The hon'ble gentleman has brought his amendment upon section 6 (*2*). He will find that the words to which he

objects to in this sub-section are only copied into it from section 8 (*b*) of the existing Act. He will find it there stated, with regard to the majority of public demands, that any judgment-debtor can bring a suit in the Civil Court to contest his liability, but no suit shall be entertained unless the judgment-debtor has stated in a petition to the Collector the ground upon which he claims to have such certificate cancelled, or unless, having omitted to state such ground in such petition, he can satisfy the Civil Court that there was good reason for such omission. That is the existing provision with regard to the majority of public demands under section 8 (*b*) of Act VII (B.C.) of 1880. All we propose to do is, to incorporate the same provision in section 6 (*g*). It is obvious that, when a man goes to the Civil Court direct, he will be required to state his whole case there; but if he prefers to go in a roundabout way by presenting a petition of objection first, he should state his case at once. It is believed to be a sound principle of law that a man should show his whole case—his whole hand—and not keep in the background certain facts to be laid before a later Court. That is the whole point."

The Hon'ble MR. LYALL said:—"The object of this provision in my view is to reduce litigation. If a man has a good case, there is no reason why he should not declare it before the Collector, who would in all probability decide in his favour. I can see no reason why he should be allowed to make reservations before the Collector, and not state his whole case there. This provision is a reproduction of section 33 of Act XI of 1859. The Imperial Council has decided that, in sales of estates for arrears of revenue, the zamindar who has an objection to urge against the sale of his estate should state his whole case to the Commissioner in the first instance, and not be allowed to keep back a part of his case for the Civil Court; and that provision has been incorporated into the present Bill."

The Hon'ble BABU SURENDRANATH BANERJEE in reply said:—"With all deference, I desire to submit that the point I raised has not been met. It is admitted that the two classes of judgment-debtors are treated in a different manner. The one who goes to the Civil Court direct is allowed to state what he likes; the other is not so privileged. Practically, the man who shows his confidence in the Revenue authorities is placed in a worse position than he who

goes to the Civil Court in the first instance. It may be that the Government of India has not affirmed the principle for which I am contending; but we are now amending the law, and it is but fair that the two classes of judgment debtors should be placed upon the same footing. I hope that under these circumstances this amendment will be accepted by the Council."

The Motion was put and negatived.

The Hon'ble MR. R. C. DUTT moved that the concluding portion of clause (*2*) of section 6, beginning with the words "and has not paid such arrears" be omitted. He said:—

"This portion of the clause prevents a judgment-debtor from going to the Civil Court unless the money demanded has been paid within fifteen days. This has been the law for the last fifteen years, but as we are amending the law, I think it is open to any hon'ble member to suggest the omission of any clause which is both unnecessary and open to objection. I think these words unnecessary, because, as far as my experience goes, this clause does not help the work of collection in any appreciable degree. When a man from whom money is due has any property, we can, by following the procedure of the Certificate Act, obtain the money without restricting his right to go to the Civil Court. On the other hand, this is a provision which the judgment-debtor is in most cases unable to comply with. Suppose a man has taken farm of an estate from the Government for a number of years, and is unable on account of an inundation or other cause to pay up the amount in due time? The question is whether, if he brings an objection before the Collector, pleading that the inundation is due to breach of an embankment kept up by the Government, and the Collector rejects that ground of objection, then, before he can go to the Civil Court, he must pay the money within fifteen days after the order is passed. It is very often impossible for a man under such circumstances to pay the money, and we are therefore imposing a sort of impossible condition upon him. As I have already said, it is not a condition which helps us in realising the money when a man is insolvent. But when a man is solvent, when he has any property, we find no difficulty in recovering the money, and therefore I would let him go to the Court to contest the certificate. I suggest this all the more, because the certificate is made by the Revenue authorities, and if we are wrong in any way, let the judgment-debtor go to the Court and prove

that we are wrong. As the law now stands, he must first put down the money within fifteen days before he can show us that we are wrong and have his remedy. For these reasons I think that, although this has been the law for the last fifteen years, the law should be amended."

The Hon'ble MR. LYALL, with the permission of the President, asked the hon'ble mover of the amendment to state whether he based his proposal on any case of hardship within his own knowledge?

The Hon'ble MR. R. C. DUTT replied:—"There have been cases similar to the case supposed. There has not been any case that I know of exactly on all fours with the supposed case, but there have been analogous cases in which I have found it impossible for the man to pay the money within fifteen days. I cannot refer just now to any particular case exactly similar to the case I have supposed."

The Hon'ble MR. BUCKLAND said:—"I am not prepared to accept this amendment on behalf of the Government. The hon'ble member said he considered it unnecessary because the present procedure did not help us in making realizations. The procedure requires that the judgment-debtor, before making an objection, should pay up the money, and if that does not help us, I do not know what will. But though the hon'ble member admits that this has been the law for fifteen years, he has not consulted the proceedings of the Council in connection with the passing of this law. It has been my lot to call attention to the difference between these two sections in the Act. The demands referred to in these sections (5 and 6) were intended, when the Bill, which became Act VII (B.C.) of 1880, was introduced, to be called 'certificates absolute.' That expression was subsequently dropped, but afterwards they were called 'certificates of the 1st class.' I shall read a few words to show what Mr. Field, who was in charge of the Bill, meant. He said on the 3rd April, 1880:—

'In respect of these two classes of arrears, what was then termed a Certificate Absolute was proposed to be made, that is to say, a certificate which should have to all intents and purposes the force of a final decree of the Civil Court. In the margin of the Bill Mr. Field had, however, pointed out an old Regulation of the Bengal Code which had, in all probability, been overlooked when the Act of 1868 was before the Council. The effect of that Regulation was that if a person were called upon by the Collector to pay a sum of public revenue, and at the time made an objection in writing and then paid the amount, such person could

afterwards bring a suit in the Civil Court to contest his liability. It appeared to the Select Committee desirable to bring that Regulation within the purview of the Bill. The Committee have accordingly done so, and the right which the Regulation gave of contesting the liability to pay has been left intact, but the provision that the amount must first be paid up has been retained. Certificates of this class would no longer be Certificates Absolute, and the Committee therefore struck out the term *absolute*. The result is to leave the law as it was before, only that this law is now contained in one Act, instead of being as it was before to be sought for in an Act and a section of an old Regulation.'

"So that the law to which the hon'ble mover of the amendment takes exception has been the law for much more than fifteen years, and on the part of Government I am not prepared to alter it in the way proposed."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I have heard it said in the course of these debates more than once that this law has been more than fifteen years old. We legislate with the view of introducing changes in the law. I think this amendment deserves the support of the Council. My hon'ble friend, the mover of the amendment, has not been able to cite specific instances, but the fact which he asserts is that to make this demand must deter the judgment-debtor from bringing his suit. If he has been unable to pay the money, and a certificate has been made, it stands to reason that he will have considerable difficulty in paying the money before launching into expensive litigation. Zamindars do not find difficulty in recovering their rents. The whole question between the Government and the raiyat is whether the raiyat should pay the money or not? He denies his liability to pay, but you make him pay before he can contest his liability. This, I submit, is inverting the natural law of justice. The man denies his liability, the State compels him to make the payment, and then gives him leave to contest his liability. This is not, in my judgment, the light in which we ought to amend the law, and I therefore think this amendment ought to be accepted by the Council."

The Hon'ble MR. WILKINS said:—"The hon'ble member who has just spoken has not quite correctly stated the object of legislation when he says that we legislate to introduce changes into the law. I think it may be more fairly said that we legislate and make changes in the law when such changes are shown to be necessary and desirable, not otherwise. In the present instance, I see no necessity for any change. An hon'ble member had in the course of these

discussions expressed a considerable amount of sympathy for the individual whom he has been pleased to call the poor and oppressed raiyat. As I read section 6, the poor and oppressed raiyat does not come into consideration at all. It refers to a judgment-debtor in respect of certain arrears which are still due after an estate or tenure has been sold, or in respect of arrears due from a farmer who has not paid; therefore I think that this particular part (*b*) of clause (*2*) should be retained, and that for a very essential reason—because, if the objector (the judgment-debtor) has money to file a civil suit, he has money to pay the arrears which are undoubtedly due from him. He is allowed every possible opportunity of objecting against the payment of an amount undoubtedly due, and he should not have the further opportunity of filing a civil suit until he has paid the money."

The Hon'ble MR. R. C. DUTT in reply said:—"I do not think that I can quite follow the reasoning of the hon'ble gentleman who has last spoken. It very often happens that an estate is farmed to a farmer for a large sum of money. It would be very difficult for him to find all that money and pay it down before going to the Civil Court, whereas the initial expense of filing a civil suit will not be anything like Rs. 2,000 or Rs. 3,000 which he may have to pay the State. If in such case he has been unable to pay, owing to floods caused by a breach of a Government embankment for instance, we ought to allow him to contest his liability without imposing upon him the condition to pay a large amount within fifteen days, which it would be impossible for him to do."

The Motion being put, the Council divided:—

Ayes 7.	*Noes* 8.
The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.	The Hon'ble Mr. Wilkins.
The Hon'ble Mr. Womack.	The Hon'ble Mr. Buckland.
The Hon'ble Maulvi Serajul Islam Khan Bahadur.	The Hon'ble Mr. Collier.
The Hon'ble Mr. Ghose.	The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.
The Hon'ble Babu Surendranath Banerjee.	The Hon'ble Mr. Bourdillon.
The Hon'ble Mr Dutt.	The Hon'ble Mr. Lyall.
The Hon'ble Mr. Cotton.	The Hon'ble Sir John Lambert.
	The Hon'ble Sir Charles Paul.

So the Motion was lost.

[*Babu Surendranath Banerjee ; Mr. Dutt.*]

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following words be added at the end of the proviso to sub-section (*2*) of section 6:—

'or in any case in which an appeal has been preferred under section nineteen within fifteen days of the determination of such appeal.'

The Motion was put and agreed to.

The Hon'ble MR. R. C. DUTT moved that clause (*f*) of section 7 be omitted, and that the necessary alterations be made in other parts of the Bill. He said:—

"Under the law as it at present exists, the certificate procedure may be had recourse to for arrears of rent due to estates under the Court of Wards, and managers of estates under the Court of Wards have for many years past applied to the Collector for certificates for realization of arrears of rent. I am not sure that the result of this practice has always been either successful or what is desirable. It has been my experience in several districts that managers have taken undue advantage of this facility in collecting rents, and that tahsildars have not exerted themselves as they would if they had not the advantage of this procedure. In several districts, year after year, thousands of requisitions were sent by managers to the Collector for realizing rents from raiyats which it was the duty of the manager to realize, but which he did not exert himself to realize. And the result was that as the Collector had charge of the property, he had to make the certificates in the way laid down by the law. Some years ago an order was passed by the Government that certificates should not be made with regard to rents due to any estates unless such estates had been surveyed and settled. The result is that in most parts of the estates managed by the Court of Wards, the certificate procedure is not now followed. There are something like eight or ten such estates in the Midnapore district, and in Burdwan there is the very large estate of the Burdwan Raj under the Court of Wards. Very small portions of these estates have been surveyed and settled, and the managers are therefore trying to realize rents without the help of the certificate procedure. I do not think the result has been any worse than in previous years, and this shows that managers can realize rents without that procedure.

"I therefore submit that it is unnecessary to invest managers of Court of Wards' estates with the power of sending requisitions to the Collector for the collection of arrears under the certificate procedure. I do not think, strictly speaking, rents due to such estates can be called public demands. They are not rents due to the Government, but they are rents due to private zamindars, whose estates we are managing for the time being, and they are being realized by managers who are paid out of the proceeds of the estate. They are not public revenue in any sense of the word, and the principle upon which we have recourse to the certificate procedure to realize Government demands does not apply, I humbly think, to such classes of demands. The principle I understand is that, when money is shown in public books as due to the Government, there is very little doubt as to the amount being due, and therefore it is unnecessary to go to the Civil Court for the realisation of the amount, and a simple declaration of the Government that the sum is due may be held to be tantamount to a Civil Court decree. I do not think that this principle can apply to rents due to a private zamindar from his raiyats; he depends upon a large number of tahsildars who are there before we take charge of an estate, and who continue making collections after we take charge, and on whom we have to depend to a large extent. I do not think we can be as certain in this class of demands as we can be with regard to demands due to Government; and I therefore object to this procedure being followed for the recovery of such demands. And our recent experience has shown that it is quite unnecessary, because managers can do the work very well without the aid of the certificate procedure."

The Hon'ble MR. BUCKLAND said:—"I am not prepared to accept this amendment on behalf of Government. The hon'ble gentleman who has just spoken is perhaps not aware that this question has been debated more than once in this Council. It has been the subject of a number of reports, and comes before us with a long history attached to it. If the hon'ble gentleman before entering upon this question had only referred to the Proceedings of this Council which took place when Act VII (B.C.) of 1880 was being passed, he would have seen a great deal of discussion upon this very point, namely, whether the principle of the certificate procedure should be applied to the recovery of arrears of rents in estates under the management of the

[*Mr. Buckland.*]

Court of Wards. It becomes almost painful to have to go over the same ground over and over again. When the Sale Law Bill and this Bill were first circulated for criticism some years ago, the High Court went into this question and made some remarks about it. The Judges considered in paragraph 10 of their letter of the 29th August, 1891, that the system, *i.e.*, the certificate procedure, should no longer be allowed to prevail in respect of rents due upon private estates under the management of the Courts of Wards or otherwise in the hands of the Collector. The Board of Revenue, I think, fully answered everything which had been said by the High Court, and before the Government referred the present Bill to the Government of India in 1893, we examined carefully the Proceedings of this Council at the time the Certificate Act was passed. It will probably save the time of the Council on the whole if I read a rather long extract from our letter to the Government of India, because there we take care to sum up as precisely as possible all that has been said on the subject. We said:—

"The High Court's argument was mainly directed against the inclusion in the class of public demands of rents due in estates under the management of the Court of Wards, and the Lieutenant-Governor asked the Board whether there was any reason why the conditions suggested by the High Court should not be fulfilled in the case of Wards' estates. The Board's reply (in paragraphs 7-12 of their letter of 12th September, 1892,) is that demands on behalf of the Court of Wards partake but slightly of the character of claims made on behalf of a private individual: such estates are under Government officials, their records are open to inspection, and their accounts are audited, so that the theoretical objection to the use of the certificate procedure hardly exists in case of such estates more than in respect of Government estates.

"'An estate,' the Board observe, 'under the Court of Wards is not liable to sale for arrears of revenue, and as the demands due to it from tenure-holders and raiyats are often so numerous and for so small an amount as to make a resort to the Civil Court in every case impossible, the management of the estate could not be carried on without the employment of a summary procedure. It is also the fact that the management of a Government estate, as regards the nature of the demand, is on all fours with that of an estate under the Court of Wards; yet the High Court have not objected to the employment of the certificate procedure in respect of demands due from the raiyats on a Government estate.'

"The principle which is now criticised is not a new one, but has been established for a long period of years. The Lieutenant-Governor thinks it unnecessary to go over the whole history of this matter, but he would invite a reference *inter alia* (1) to section XIX of Regulation VII of 1799, which rendered a certain stringent procedure, authorized for the

recovery of arrears of rent due to proprietors and farmers, applicable to the managers of Wards' estates and to joint undivided estates, as well as to Collectors holding lands in attachment or under *khas* collection; (2) to the Proceedings in the Bengal Legislative Council of the 13th and 20th March and 3rd April, 1880, in connection with the Bill which became Act VII (B.C.) of 1880; (3) to the Hon'ble Mr. O'Kinealy's speech in Council on the 20th March, when he 'agreed with the Hon'ble the Advocate-General and Mr. Dampier that since the beginning of the British rule in India, realizations in rent in Wards' estates were subject to exactly the same procedure as that of Government estates, and the reason was that the Government having taken charge of the estates and looked after them, considered itself justified in recovering amounts due to the estate by the same process as in Government estates;' (4) to the fact that, on the 3rd April, 1880, when the Hon'ble Babu Kristo Das Pal, in Council, moved that the certificate procedure should not be applicable to the realization of rents in Wards' estates, his motion was negatived almost unanimously, mainly on the ground that Government should be allowed such powers by reason of its fiduciary interest in Wards' estates. The principle had been admitted when section 63 of Act IX (B.C.) of 1879 was passed; it was extended to the recovery of interest and costs by section 10 of Act III (B.C.) of 1881, and the Lieutenant-Governor does not see that any facts have come to light which require a reversal of this policy. It is true that there are cases where estates when first taken over are found to have their accounts in confusion, and the Board have, at the Lieutenant-Governor's request, issued orders that the certificate procedure is not to be employed in a Ward's estate until a settlement and record of rights have been made therein, and that no certificate shall issue in any case where a question of right or title is involved."

"That sums up the history of the discussion upon the question as shortly as it can be done. As regards Wards' estates, the Government occupies very much the same position as it does with regard to estates belonging to the Government. It is absolutely responsible for the good management of Wards' estates as much as it is responsible for its own property. It has been held hitherto that without this summary procedure rents could not be properly collected. The hon'ble gentleman referred to some Wards' estates in the Midnapore and Burdwan districts under his supervision, which showed that managers were trying to do their best. I trust that all managers would try to exert themselves to collect rents whatever the law might be; but it is much too early to say, in fact we have absolutely no information before us, whether those managers are successful or whether they will fail. We know that this procedure has been found necessary elsewhere to enable the Board of Revenue and the Court of Wards to render a proper account of their stewardship, and I am not prepared on behalf of the Government to surrender it at present."

[*Mr. Ghose.*]

The Hon'ble MR. GHOSE said:—"Although I have an amendment on the same subject which is in the nature of a compromise between the amendment of my hon'ble friend and the provision contained in the Bill, I shall be very glad if this amendment is carried. I entirely agree with my hon'ble friend that it is difficult to see how rents due to private estates under the management of the Court of Wards or of the Revenue authorities can properly be said to be public demands, and I do not see any reason why a summary procedure, which is only justifiable in the case of debts due to the Crown, and which are easily and correctly ascertainable from public records, should be extended to private demands having no analogy to those exceptional cases. I will not dwell on the evils and the abuse to which this system is liable. The hon'ble mover of this amendment can speak on that subject with an authority which I do not possess. Hon'ble members are well aware that the learned Judges of the High Court are strongly opposed to this provision of the law, and I submit that their opinion on a matter like this is entitled to the greatest deference. The hon'ble member in charge of the Bill alluded to the previous debate on the principle of this provision as having settled the question so far as the principle of this amendment is concerned, but he did not tell the Council that even in 1880 some strong protests were made against this measure. The Hon'ble MR. FIELD, who was then in charge of the Bill, certainly spoke in very guarded and hesitating terms when he alluded to the principle of this provision. He said:—

'I then come to clause (7), which proposes to extend the special procedure to the recovery of rents in estates which, under any law for the time being, are under the management of the Court of Wards. This is a new provision, and I am prepared to admit that it is a provision which carries the principle of the Bill to its extremest limits.'

"The hon'ble gentleman has also told us that a motion was made in regard to this provision, and that it was lost by a large majority. The late Babu Kristo Das Pal, than whom no abler representative of his countrymen has ever sat within these walls, made a strong protest, and he was supported by his colleague, Raja Peary Mohun Mookerjee. Then, again, what is of greater importance and to which no reference was made by the hon'ble member in charge of the Bill, the protests of those gentlemen were virtually endorsed by no less an authority than the then Lieutenant-Governor of Bengal, SIR ASHLEY EDEN. I will, with your permission, Sir, draw the attention of hon'ble

members to the grave and weighty words which fell from the President of the Council on that occasion. His Honour said :—

'His Honour the President, before putting the question that the Bill be read in Council, would say, as regards the question of principle that had been raised, that he must admit it seemed to have a great deal of force and reason in it, and it was a subject which the Select Committee should carefully consider. It was not a matter which the Council could raise and dispose of off-hand. He understood it was not the intention of the hon'ble member who raised this question to move a specific amendment, but to request that the Select Committee should consider it. It might be quite true, as the hon'ble member on the right (Mr. Dampier) said, that the history of this principle, although it had been rather confused at times, had been generally to affirm that there should be a special procedure for the recovery of demands in estates under the management of Government officers, even though they were not the property of Government. His Honour did not think it necessary to go back to the practice of 1799, because the summary procedure which existed then was not the present certificate procedure, and bore no sort of resemblance to it. Then, in the Act of 1870, a clear distinction was drawn in section 4 as to estates managed *khas* and those managed through a manager or agent, and he thought the necessity for making that distinction showed how unsound was the principle of bringing Wards' estates under the procedure of that Act; the section provided that under direct management of the Collector, the special procedure might be accepted, but not where Wards' estates were under the charge of managers, showing the doubts that existed in the minds of the framers of that measure. Therefore it could not be said that the principle of the provision in the present Bill was absolutely affirmed in 1870. It would no doubt be said that if the special procedure was absolutely necessary to ensure the recovery of a sufficient amount of rent to meet the Government demand, the same security was necessary for all estates in the country. It should be remembered that special powers were given to Government, because it was not holding as a private individual, but as a trustee for the public. Government had no individual interests in the collection of its dues, and was not likely to be influenced by selfish or unjust motives, but that was not the case where the interests of a private estate were concerned. Where estates were managed by the Court of Wards, it was not the interests of the public which were being guarded and protected, but the interests of a private individual: the loss or profit did not affect the public revenues, but the revenues of a private estate, and therefore the question of Wards' estates differed altogether from Government estates * * * * * * *

'On the whole, he thought it desirable that the Select Committee should consider very carefully the whole principle, whether the grounds which made it necessary to have a summary procedure for the recovery of Government demands applied to the management of Wards' estates. He should be very glad, in consequence of what had passed, if the Committee would give to the subject their serious consideration when the Bill was laid before them.'

"Under these circumstances, I think my hon'ble friend who moved this amendment and those who agree with him are perfectly justified in respectfully asking the Council to reconsider a principle, the soundness of which was at that time condemned in such unmistakable language by the President, which was protested against by those who then represented the popular voice in this Council, and which is still opposed by public opinion and by the learned Judges of the High Court."

The Hon'ble SIR CHARLES PAUL said:—"I was a party in the discussions to which the Hon'ble MR. BUCKLAND has referred, and as I think that the arguments which I then adduced were very strong arguments, and as they commend themselves to me now as much as they did then, perhaps the view I took then may serve to convince hon'ble members of the necessity for this provision of the law. I said then:—

'Although an estate managed by the Court of Wards was not a Government estate, still the Government was to a certain extent directly interested in the collection of the rents of that estate. When an estate came under the charge of the Court of Wards it could not be sold for arrears of revenue, and it behoved the officer in charge to get in the rent (as speedily as possible) in order to pay the Government revenue, and in that way the collection of rents in Wards' estates became a matter as important to the Government as its own revenue.'

"That was what I then stated, and although on principle one is perfectly justified in saying that the rent which the Court of Wards collects is not a public demand, still in reality there is very scarcely any difference between a Government demand which should go into the treasury as speedily as possible and may be recovered by summary procedure, and a demand which the Government through the Court of Wards is entitled to realize without delay for the benefit in part of themselves. Therefore the difference, although it exists in principle, does not appear in reality, and hon'ble members are justified in extending to such demands the summary procedure prescribed by this Act."

The Hon'ble MR. LYALL said:—"I desire to traverse one or two of the statements which have been made by the hon'ble mover of the amendment. He said that at the end of the year a number of requisitions are filed by the managers of the Court of Wards' estates. I would ask whether the zamindars do not follow the same course in respect of their rents? Do not they file suits to avoid claims being barred by limitation? And why should not managers

of Courts of Wards of estates take proceedings to avoid their claims being barred? That these requisitions are made broadcast at the end of the year I deny so far as my experience goes, and I think it is generally admitted that out of the many departments administered by Government few or none do more good to the country at large than the Court of Wards. Many families have been saved from ruin by its management, and estates have been saved from sale. Such being the case, I think we are bound to give every facility to managers to do their work, and I am convinced that the Court of Wards would not be able to do the amount of work it does without this summary procedure. This procedure was legalized under the Court of Wards Act, 1879, section 63 of which provides that 'all arrears of rent due by farmers, under-tenants and raiyats in respect of property under the charge of the Court, (whether such rents have become due before or after the Court has taken charge) shall be recoverable as arrears of revenue, and shall constitute a demand under Bengal Act VII of 1868, or any similar Act for the time being in force. The last preceding clause shall not apply to arrears of rent enhanced after issue of notice under section 13 of Act X of 1859, or under section 14 of Act VIII of 1869, but of which the enhancement has not been agreed to by the person who is liable to pay the same, or has not been confirmed by competent authority.' That law is now in force, and even if the amendment is carried, it will absolutely have no effect, for what I have read will still remain the law. I desire also to bring to the notice of the Council what has happened since the passing of that Act. Almost immediately after the Wards Act was passed, the Tenancy Act came before the Government—a measure which was originally based on a digest of the then existing law prepared by MR. FIELD, and in section 4 of that digest he retained this procedure as regards Wards' estates. The next draft of the Tenancy Act was prepared by a Commission, and there again this procedure was included in section 4. The next was what is generally known as the Bengal Bill, and in section 4 of that Bill also it was included. It was again included in section 284 of the Bill introduced in the Council of the Governor General; and finally when the Tenancy Act was passed, this provision was contained in section 195, and no word was said in the Imperial Council against the retention of this provision in the Tenancy Act. The Hon'ble MR. GHOSE has read what was said by SIR ASHLEY EDEN on this subject. I desire to place before the Council a later opinion of a Lieutenant-Governor of

this Province (SIR RIVERS THOMPSON) when he reported to the Government of India his opinion upon the Tenancy Act. In paragraph 28 of that letter he said :—

'There is besides the paramount reason that the rents collected by Government are really revenue, and the procedure for enforcing payment of State dues must, in the general public interests, be more summary than the procedure for enforcing private dues. If this were not so, the ultimate result would be the employment of larger establishments, greater expenditure, and increased taxation. Thus a summary procedure for collecting the public revenue, while necessary if the Government of the country is to be efficiently administered, and while not open to the objections to which a summary procedure for collecting private debts is opposed, is in the long run the easiest and the cheapest for the people. Nor is this principle inapplicable in case of estates of disqualified proprietors managed by Government, for the rents of such estates include the revenue.'

"The above embodies a later opinion of this Government than that quoted by the Hon'ble MR. GHOSE, and we have heard from the Hon'ble MR. BUCKLAND that this is still the opinion of the Bengal Government. In conclusion, I wish to say that the Board of Revenue believe that if this amendment is passed, the management of estates under the Court of Wards will suffer very severely."

The Hon'ble MR. R. C. DUTT in reply said :—"The Hon'ble the Advocate-General has admitted that in principle rents due to estates under the management of the Court of Wards are not public demands, and this Council will have to decide whether under these circumstances the law for the recovery of public demands should be applied for the realization of such rents. I entirely agree with what has fallen from the Hon'ble MR. LYALL as to the amount of good which is done to the country by the Court of Wards managing the estates of minors incapable of managing their own estates, and also as to the feeling all over the country that the Government is doing a vast amount of good by saving the property of minors by employing their own officers to manage minors' estates. My only contention is, that we shall be able to manage just as well without this summary procedure. In that respect, I have ventured to differ from a senior and more experienced officer. I believe that the experience of the last few years has shown that what I propose can well be done."

[*The President.*]

The Hon'ble THE PRESIDENT said:—"This is in my opinion the most important amendment before the Council to-day, and although the opinion of the Government has been well and ably expressed by the hon'ble members who have spoken on behalf of the Government, I think it right to express my own view as briefly as possible in order to show why I consider it most inadvisable to accept this amendment. The Hon'ble MR. DUTT has supported his amendment upon two grounds—*first*, that it is just in principle, and *secondly*, that it is feasible in practice. Taking the latter point first, the question of practice, I do not think the hon'ble member has himself sufficient information to put the matter fully before the Council. The order passed at my request by the Board of Revenue, that in Wards' estates which are not settled and surveyed the certificate procedure should not be adopted, has not been in force very long, and we have no definite statistics as to the effect it has produced. I find in the last Board's Report (for 1893-94) that in Court of Wards' estates 7,930 certificates were filed. This is not altogether in agreement with the impression which exists in the mind of the Hon'ble MR. DUTT, and which he conveyed to us, namely, that the certificate procedure in these estates has been to a large extent stopped. It is evident that it is to a large extent going on, although it may have decreased. But what would be the effect of stopping it altogether?

"The hon'ble member seems to think that this procedure is only used by managers and tahsildars in Wards' estates who are lax in collecting rents; that they are slack in their procedure and rush into the Collectorate with a bundle of requisitions at the end of the year. I am not prepared to say that this is not altogether correct, simply because there is a certain amount of imperfection in the human organization. No one will believe that tahsildars are absolutely free from the faults due to common human nature. But as the Hon'ble MR. LYALL has explained, it is absolutely necessary, when all has been done which could be done, at the last moment, to avoid the operation of the Limitation Act, that a certain number of certificates should be filed on the requisition of tahsildars, just as suits are filed by zamindars during the last two or three days of the year. If these 7,930 certificates were to be turned into 7,930 civil suits, what would be the result? Would it be for the good of the 'poor and oppressed' raiyats? Certainly not. They would have the cost and labour of defending the suits, and they would also have to pay the expense incurred in the execution of decrees instead

of the simple procedure and trifling expense of a certificate. It would be to his injury and not to his good if the principle of this amendment is carried out. I entirely agree with the expression of SIR RIVERS THOMPSON'S opinion which the Hon'ble MR. LYALL has read, that the certificate procedure is the most convenient and easy procedure on behalf of the judgment-debtor. It is for the debtor's good that we should use this procedure.

"Then, from the question of practice we come to the question of principle. The attack is based on the principle that this is a Public Demands Recovery Act, and that money due to Wards' estates is not a public demand. Even on that ground the attack should be resisted. We have heard the Hon'ble the Advocate-General say that the opinion which he held fourteen years ago is still held by him in his maturer mind unchanged, and the same opinion is expressed by the Government letter which has been read by the Hon'ble Mr. BUCKLAND. But I take my stand from a different point of view. Although this is called a Public Demands Act, it is not intended to be confined to public demands. That is a convenient way of denoting demands on account of which a certificate is issued, but it is not an exhaustive description. The operation of the Act is not confined to public demands, for we know that under the Road Cess Act this procedure may be used for the recovery of sums due to a landlord who has paid the cess on behalf of his shareholders. That is essentially a private demand, and yet we allow the certificate procedure to be used by the zamindar, and I wish to impress upon the Council that the reason why we do so is that it is a demand which is positively known. This is what differentiates claim for which a certificate may be taken out from other claims. If there be no dispute, if it is clearly laid down in the *jamabandi* or the *jamawasil-baki*, that a certain tenant owes a certain sum as rent to Government or to the manager of the estate on behalf of Government, what necessity is there to file a suit in the Civil Court when you know absolutely the fact that the demand is due? This question will come before the Government shortly in another shape. A suggestion has been made with regard to the maintenance of the Record of Rights Bill that zamindars who pay the survey cess on behalf of their tenants should be allowed to recover it if necessary by taking out a certificate. This suggestion seems to me a reasonable one, and if the Select Committee approve it I shall be ready to give the assent of Government to it. I shall do this the more readily because it will to some extent pave the way to granting to zamindars a more summary method of collecting arrears of

rent. Hon'ble members know that it has long been my desire to be able to provide a measure of this sort. The difficulties are very great, but I hope before I leave India that I may be able at least to put before the Government of India a project of law to the effect that where there is a demand which is absolutely certain, where a zamindar has had his estates surveyed and settled under the Tenancy Act, and the record kept up and all mutations registered, he should be able to get a certificate from the Collector, and be free from the trouble and annoyance of going to the Munsif to enforce his right on account of arrears. For these reasons, I think it will be extremely inconvenient to take a retrograde step now. My view is that we should be able to extend the law to other cases in which the sum in demand is truly and certainly known to be due, so that there can be no dispute about it."

The Motion being put, the Council divided:—

Ayes 4.	*Noes* 11.
The Hon'ble Maulvi Serajul Islam Khan Bahadur.	The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.
The Hon'ble Mr. Ghose.	The Hon'ble Mr. Womack.
The Hon'ble Babu Surendranath Banerjee.	The Hon'ble Mr. Wilkins.
The Hon'ble Mr. Dutt.	The Hon'ble Mr. Buckland.
	The Hon'ble Mr. Collier.
	The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.
	The Hon'ble Mr. Bourdillon.
	The Hon'ble Mr. Lyall.
	The Hon'ble Sir John Lambert.
	The Hon'ble Mr. Cotton.
	The Hon'ble Sir Charles Paul.

So the Motion was lost.

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, moved that in the proviso to clause (*f*) of section 7, after the word "this" the words "and the preceding" be inserted. He said :—

"It is but fair that the proviso should be extended also to clause (*e*) with reference to Government *khas mahals* as well as to estates under the management of the Court of Wards. I submit that where there is any question about the enhancement of rent, about which there is a dispute, it is but fair that the procedure of the Certificate Act ought not to be applied,

[*Maulvi Serajul Islam; Mr. Buckland; Sir Charles Paul; Maulvi Muhammad Yusuf.*]

and the raiyats be forced to pay the enhanced rate of rent in this summary manner. I therefore move that this proviso, which is applicable to the Court of Wards' estates, ought to apply also to clause (*e*) regarding the recovery of arrears in *khas mahals*, and which the Government is in the same position as a zamindar."

The Hon'ble MR. BUCKLAND said:—"As far as I can make out, the hon'ble member has not brought forward a single reason for altering the existing law. He proposes to extend to clause (*e*) a proviso which applies only to clause (*f*). It applies to clause (*f*) because it is the present law under section 63 of the Court of Wards' Act of 1879. That clause does not now appear in the Court of Wards' Act, as it finds a place in the Certificate Act, but I cannot see any reason for extending it to clause (*e*). Does the hon'ble gentleman suppose that the Government—the Collector or other Certificate Officer—would issue a certificate as a means of enhancing and recovering any enhanced revenue or rent under clause (*e*)? The object of the whole Act, as His Honour the President explained, is that certificates may be issued for the dues of Government, which are absolutely and certainly known to be due. Is it likely that the Collector would deliberately issue a certificate for an enhanced rate of rent without being certain that it is absolutely due? I see no real reason whatever for adopting the amendment. Has the hon'ble member known of any single case in which a Certificate Officer has tried, on behalf of the Government, to levy a demand which he is not perfectly entitled to levy? If he has not, I am bound to say that I cannot accept the amendment."

The Hon'ble SIR CHARLES PAUL said:—"I must confess I do not understand the meaning of this amendment. Enhanced rent must be rent which has been either agreed upon or which has been confirmed by a competent Court. There can be no element of uncertainty about it."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"As I understand the object of this amendment is to introduce some sort of uniformity in the issue of certificates, and to remove want of some uniformity. One uniform rule is suggested to govern cases falling within both clauses (*e*) and (*f*), and it is contended that both the clauses should be governed by the same principle both as regards the cases in which the certificates ought to be issued and also in regard to cases in which certificates ought not to be issued; the

law laid down in the Bill makes a distinction by applying the proviso only to clause (*f*). The question, therefore, is, do not the cases which fall under both the clauses (*e*) and (*f*) stand on the same footing, and should they not be dealt with in all respects by the same rule and the same principle? I do not see any material difference between the cases falling under those two clauses, regarded from the point of view from which they are now being considered. If the principle regulating the issue of certificates is the certainty of the demand, and if the cases under clauses (*e*) and (*f*) have been included under the certificate procedure by reason of such certainty, and further, if, by reason of want of such certainty, some cases are to be taken out of the operation of the rule laid down in clause (*f*) and thrown in the proviso to that clause, then it is clear that the very same want of certainty affects those identical cases when they fall under clause (*e*). There is no reason why the exception should be confined to clause (*f*), and should not be extended to clause (*e*). If it is necessary that there should be an exception in clause (*f*) in favour of cases in which there has been no decree of a competent Court, then it is likewise necessary that there should be a corresponding exception in clause (*e*) in favour of like cases. Under clause (*f*) the landlord is the Court of Wards; under clause (*e*) the landlord is the Secretary of State. Both might have power to issue a certificate when the demand is certain, and consists of what is really and strictly an arrear of rent; but an enhanced rent is only nominally an arrear of rent. To make it really an arrear of rent, the enhancement must have been agreed upon or finally adjudicated upon; and before adjudication by a competent authority, the enhanced rent is not a demand for a sum certain. Until such adjudication, the enhanced rent contains all the elements of uncertainty in consequence of the parties interested entertaining conflicting notions of the right to enhance. I therefore venture to think that when the demand results from a question of enhancement of rent, the right to issue the certificate should be withheld from clause (*e*), for the same reasons for which it has been considered proper to withhold it from clause (*f*)."

The Hon'ble MR. LYALL said:—"I venture to point out a mistake which has been made by the hon'ble gentleman who last spoke. He contended that clauses (*e*) and (*f*) are analogous, but I say they are quite different. The gist of the demand under clause (*e*) is, that it is a public demand and no enhancement of rent is *payable* unless it is legally due. The wording of clause (*e*) is entirely different from the wording of clause (*f*). Nothing is entered in the Collector's

books as 'payable' until it has become a legal liability, and certificates are properly issued for the recovery of such demands."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, in reply said:—"With great respect to the hon'ble gentleman who spoke last, I do not think that the word 'payable' makes everything payable to Government a legal liability. It may be payable in the view of the Collector, but a Civil Court may hold otherwise, and say that enhanced rent is not payable, though the Collector or the manager of a Ward's estate may claim it to be payable. There may be a dispute whether enhanced rent is payable or not, and under such circumstances the certificate procedure should not apply. With regard to the observation which fell from the hon'ble member in charge of the Bill whether it is likely that the Collector would issue a certificate for a demand which was not due, if the Collector was bound to look into the matter himself it would be different. If the Collector could do everything personally there could be no complaint; and as a matter of fact many complaints are made of irregularities occurring and, therefore, this power should not be given to a Government officer or a manager of a Ward's estate. It is admitted to be the principle of this law that where a demand is disputed this procedure ought not to apply. The very foundation of this Act is that the demand is justly due, and therefore this summary procedure is granted; but where there is a question of enhancement of rent, I submit that this summary procedure ought not to be given even to the Government."

The Motion being put, the Council divided :—

Ayes 6.	*Noes* 9.
The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.	The Hon'ble Mr. Wilkins.
The Hon'ble Mr. Womack.	The Hon'ble Mr. Buckland.
The Hon'ble Maulvi Serajul Islam Khan Bahadur.	The Hon'ble Mr. Collier.
The Hon'ble Mr. Ghose.	The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.
The Hon'ble Babu Surendranath Banerjee.	The Hon'ble Mr. Bourdillon.
The Hon'ble Mr. Dutt.	The Hon'ble Mr. Lyall.
	The Hon'ble Sir John Lambert.
	The Hon'ble Sir Charles Paul.
	The Hon'ble the President.

So the Motion was lost.

[*Mr. Dutt; Mr. Ghose; Mr. Buckland.*]

The Hon'ble MR. R. C. DUTT, by leave of the Council, withdrew the motion of which he had given notice that the last paragraph of section 7, beginning with the words "Provided also that a certificate filed" be omitted.

The Hon'ble MR. GHOSE moved that the following further proviso be added at the end of section 7:—

'Provided further that as regards claims under clause (*f*), no certificate shall issue until after such estate has been surveyed and a record of rights made in respect thereof, and in no case shall a certificate be issued in respect of such claims where any question of right or title is involved.'

He said:—"After the discussion which has taken place on the motion of my hon'ble friend, the Commissioner of Burdwan, it will not be necessary for me to detain the Council for more than a moment or two. I said on that occasion that the amendment I have now the honour to move is a compromise between the amendment moved by my hon'ble friend and the provision contained in this Bill. I ask the Council to embody in the law the wholesome restrictions that under instructions from Your Honour's Government, have been imposed by executive order forbidding, in certain cases, the employment of the certificate procedure for the realization of debts due to estates under the management of the Court of Wards. I have endeavoured to follow almost word for word the terms of the letter of the Government of Bengal, and I hope the Government may be able to accept this amendment. The public are thankful to the Government for its endeavours to mitigate the hardships and rigour of the law by executive order, but I submit that when this Bill is under consideration those restrictions should be embodied in the law itself rather than that the executive administration should continue to exercise a sort of dispensing power to moderate the hardships of the law. Under these circumstances, I ask the Council to accept this amendment."

The Hon'ble MR. BUCKLAND said:—"The hon'ble gentleman's amendment consists of two parts, but he has spoken only to one of them. With regard to the part to which he has spoken, I should like to ask him whether any fault can be found with the executive administration since that order to which reference has been made was issued in May, 1892? That order was issued in consequence of a Resolution of this Government in April, 1892, and the order now in force is an order of the Board of Revenue with which I need not trouble the Council.

The effect of that order is, that the certificate procedure is, not to be used until a survey and settlement of rights has been carried out. Since May, 1892, has any single case come to notice in which that order has been disregarded? I hear no reply, and I am not prepared to say of my own knowledge that a single case has occurred in contravention of that order. Therefore it seems to me that the order has sufficiently fulfilled its purpose. It is very often made a charge against the Legislature that they legislate for things which are unnecessary. It has certainly been a charge against us in the past that a great many things have been included in Acts which might better have been made the subject of executive orders. We are told that an order which has been working well for the last three years should be included in the law, but I fail to see any necessity for it so far as regards the first part of the amendment. But the second part of it is just as important, namely, that in no case should a certificate issue in respect of claims where any question of right or title is involved. Very serious objection has been taken to that suggestion by the Board of Revenue, and for this reason, that there is hardly any case in which an ingenious Pleader or learned Counsel would not be able to make out a *primâ facie* case that a question of right or title is involved. It will never do for the course of a certificate to be suddenly arrested at the outset by some very fine drawn plea that some remote question of right or title is involved. We had this question brought to our notice at full length in a report of the Board of Revenue submitted in respect to the particular Bill. What we want is to be able to issue the certificate and then if it is found subsequently to be the fact that the man has a *bonâ fide* question of right or title, let him go to the Civil Court, but we do not want that the certificate should be nipped in the bud in the first instance because some clever Pleader or experienced Counsel may be able to show that in some way or other a question of right or title is involved. Therefore, in regard to both branches of the amendment, I put it to the Council that this amendment should not be accepted."

The Hon'ble Babu Surendranath Banerjee said:—"It is admitted by the hon'ble gentleman who has just spoken that the first part of my hon'ble friend's amendment has been made the subject of an executive order. What objection can there be to make it also the subject of a legislative enactment? The hon'ble member has asked the hon'ble mover of the amendment whether any case has occurred in contravention of the executive order. But an executive

order is a very unstable thing; it is liable to changes. His Honour the present Lieutenant-Governor has issued this order, but his successor may not agree with him, and may modify or rescind the order. I am quite aware that a legislative enactment may also be changed, but it can only be changed by a very complicated process. I think that if there is no objection to the executive order it ought now to be made the subject of legislative enactment."

The Hon'ble MR. COTTON said:—"I would suggest that there seems no particular objection to accepting the amendment proposed by the Hon'ble MR. GHOSE. Although an executive order has been passed which substantially gives effect to this provision, I am not altogether satisfied that that order has been strictly carried out. Of course, I am not in a position to answer the hon'ble member in charge of the Bill by pointing out any particular case, but I will take the figures the President read out a few minutes ago, when His Honour himself observed that the order which had been passed had not led to much reduction in the number of certificates. [The Hon'ble THE PRESIDENT said:—"I did not intend to convey that impression, because I have not got the figures separately for estates which have been surveyed and settled."] I have not the figures either, but I think it should be unnecessary to issue so many as 7,930 certificates in the comparatively limited number of estates which have been surveyed and settled, and I am not at all satisfied that the order has been entirely carried out. I would venture to point out that an executive order is very different indeed from a statutory provision. If the proposed provision is contained in the law, it would afford a ground of objection in the Civil Court; but I do not think the Civil Court will take any cognizance of an executive order if it were brought to its notice by a plaintiff. There can be no question that the object of the Government is identical with that of the Hon'ble Member who has moved this proviso, and I think it will be the best solution of the question to accept the amendment which has been proposed. And with regard to the last portion of the amendment, I believe I am right in saying that similar orders have also been issued that no certificate shall issue in respect of a claim where any question of right or title is involved. If such an order has issued and it is desirable that it should be carried out, then I think it well that it should find a place in the statute book. I hope, therefore, Your Honour will find no difficulty in accepting this amendment, which is intended to give effect to executive orders which have been issued by the Government."

[*Maulvi Muhammad Yusuf; Sir Charles Paul.*]

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"I am prepared to support both branches of this amendment, and I venture to think that if the amendment were to be adopted, the law would be improved because the section would then, in express terms, correspond to what has been the admitted practice under, and by force of, the executive orders. I think it is highly desirable that there should be no uncertainty in the words of a Statute, and that an enactment should express correctly and properly the real intention of the Legislature. If it is the deliberate intention of the Council not to authorise the issue of a certificate in certain cases, then that intention should be made clear in the Bill itself, and not left to be gathered by executive orders and rules. I submit that it is wholly undesirable to make the law expressly and in terms extend beyond the limit of expediency, leaving it to executive rules and orders to cut down the law, and tone it down so as to be brought within the limits of expediency. Before the executive orders which have been referred to in the course of the debate, I know that the practice in the matter of issue of certificates was quite different. Those orders introduced a very salutary change, and brought about a very wholesome result; they mitigated much of the inconvenience and annoyance which existed before; by making the law conform to the practice, permanency would be given to the practice, and the result would be public confidence and security in the existence of the practice which would have the sanction of the law.

"In regard to the second branch of the amendment, I submit that the principle of the amendment is equally beyond question. Claims which involve a question of right and title fall, I submit, outside the principle which regulates the certificate procedure. Certificates should only issue in cases in which there is positive certainty, and where all elements of doubt are removed. When a question of right and title is involved, the parties interested are likely to hold conflicting views on that question, and so it would be undesirable to arm one of those parties with a weapon which he might wield with dangerous consequences to his adversary. In a case involving the question of right and title, both parties should be left to fight out their difference on equal terms without the law placing one of them on a vantage ground."

The Hon'ble SIR CHARLES PAUL said:—"If I apprehend rightly the question comes to this, that in cases where the parties differ and where there is

no agreement, this certificate procedure should not be adopted. If that is so, the matter answers itself."

The Hon'ble MR. LYALL said:—"I think there are many things which are desirable, but which are not desirable to put into a law; and that restrictions are far more easily put into an executive order, and with better effect. It is not always well that such executive orders should be made rigid by being enacted into law. The present is a case in point. The executive orders have been thoroughly carried out in both these cases, and there is an inelasticity in a law which does not exist in an executive order. It may be that some future Lieutenant-Governor may think fit to enlarge the scope of the present orders, or it may be found necessary to reduce them; therefore I think such orders should not be made too unbending. Then as to the last portion of the amendment, I think the hon'ble member will admit that at first it does not appear whether a case is one of right or title or not; that only appears when an objection is filed. The present order is that when the Collector finds that it is a case of right or title, he is to dispose of the case under section 13 by dismissing it and leaving the decision to the Civil Courts. It is impossible for the Collector to see when a matter first comes before him on requisition that it will develope into a question of right or title. All that he can do when he finds that out after he has started the case is to take it off the file. Beyond that it is impossible to ask him to go."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, said:—"I agree with the hon'ble mover of the amendment, but I wish to suggest a modification, namely, the addition of the words '*bonâ fide*' before the words 'question of right or title.'"

The Hon'ble MR. GHOSE in reply said:—"I have unfortunately not by me the Blue Book relating to this subject, but if my memory serves me rightly, it will be found in page 134 of the Blue Book that, under instructions from Your Honour's Government, the Board of Revenue have issued orders that not only in cases where a survey and record of rights have not been made, but also in cases where a question of right or title is involved, the certificate procedure should not be applied. That being so, there is no conflict between my amendment and the orders passed by the Executive Government. The only question

[*Mr. Ghose; the President.*]

which remains for consideration is, whether those executive orders ought not to be incorporated with the law. I submit that they ought. As long as the law remained defective the public were grateful to the Government for moderating the hardships of the law, but the whole law on the subject is now under amendment, and I see no reason why those orders should not now be made part of the law. As has been pointed out by the Hon'ble the Chief Secretary, if these orders are disregarded, the Courts of Law will not take cognizance of them, and a man who is proceeded against in spite of those orders will have no remedy. And, moreover, another order may be passed abrogating the existing orders. The hon'ble member in charge of the Bill has asked me if I know of any case of grievance after the issue of these orders. I am not in a position to give the information, but it should be remembered that the orders are now fresh, and therefore they are probably being implicitly obeyed. They will, however, gradually grow old and rusty, and be forgotten, and when certificates are made in spite of those orders, the poor men concerned will have no remedy; whereas by incorporating those orders with the law you will make it absolutely impossible for any one to disregard them. On these grounds I desire to put this motion before the Council, but before doing so I ask leave to divide the motion into parts, inasmuch as hon'ble members who may support one part may not be disposed to support the other; and as regards the second portion of the amendment, I thankfully accept the suggestion of my hon'ble friend, MAULVI SERAJUL ISLAM, to insert the words '*bonâ fide*' before the words 'question of right or title.'"

The Hon'ble THE PRESIDENT said:—"Before putting the question to the vote, I wish to say that I am unhesitatingly opposed to both the motions, and I trust the Council will not accept them. It is not a question of principle. We are all agreed as to what should be done, and I think you may take it that we of the executive know best the way in which to carry out our intentions. I have no doubt that the best way is to put it into an executive order rather than into a law. It is true it is less difficult to change a law than to change an executive order, but if this motion is carried it will not be long before the Council is called upon to change it, because I feel sure it will not work in the way in which it is intended to be worked. It is easy to frame an order, but it is very difficult to pass a legislative enactment in such a way that holes will not be picked in it. In the executive order the words 'record of rights' are used in a rough and practical way which is not liable to be misunderstood, but

technically and legally speaking it has only one meaning, namely, such a record of rights as is framed under section 102 of the Bengal Tenancy Act. But the intention of Government was not to confine the operation of the order to those rights. We have other estates in other districts settled under other Acts. We have recently settled the Western Duars in the Jalpaiguri district under a very peculiar Act, which I have already proposed should be abolished, but the record prepared under that Act is not what the Bengal Tenancy Act calls a 'record of rights,' and once this provision is put into law every kind of objection will be raised against the Government in passing its orders. With regard to excluding any cases which may involve a question of right and title, it was the intention of the Government to introduce that principle, but the Board of Revenue, after grave consideration, pointed out that there is great danger of technical objections being raised. The first thing every objector will do will be to say that there is question of right and title involved. It will lead to a good deal of litigation, expense and delay, and throw a good deal of difficulty in the way of carrying out the simple and summary procedure of this Act, and will have no effect in producing a better administration of the principles of the law."

The Amendment was divided into two parts: the first part to consist of the words "Provided further that as regards claims under clause (*f*), no certificate shall issue until after such estate has been surveyed and a record of rights made in respect thereof"; the second part to consist of the words "and in no case shall a certificate be issued in respect of such claims where any *bonâ fide* question of right or title is involved."

The first part of the amendment was put to the vote and negatived.

The second part of the amendment was put to the vote and also negatived.

The Hon'ble MR. R. C. DUTT moved that after section 9 the following new section be added:—

'Before making a certificate under the provisions of sections five, seven or nine, the Certificate Officer shall send by post, addressed to the person from whom the demand is alleged to be due, at his last known residence, and registered under Part III of the Indian Post Office Act, 1866, or any similar Act for the time being in force, a notice calling upon such person to pay such amount within a date to be specified in the notice. And no certificate will be made if such amount be paid within the date fixed.

[*Mr. Dutt.*]

'The sending of such notice may be proved by the production of the Post Office receipt.'

He said:—"My object in moving this amendment is this. In a great many cases defaulters fail to pay the amounts due from them, not because they are unwilling or unable to pay, but because they do not remember that there is such a demand due on a fixed date. Under the Certificate Act we have to deal with a very large class of people, many of whom are in very humble circumstances and are not in the habit of keeping accounts of sums due to them or payable by them. As an instance, I may mention that in the district of Hooghly we realize Road Cess from about 6,000 zamindars and 16,000 rent-free tenure-holders, and about 10,000 of the latter hold tenures whose annual value is not more than Rs. 40. If the Road Cess is not paid in due time a certificate is filed and notice is issued under section 10, and the cost of serving the notice is added to the amount of Road Cess to be paid. The property of the defaulter is attached, and he has to pay the Road Cess with the costs incurred. I admit that it is the duty of these people to remember their liabilities, and to send in the amounts by the due date, but it would save a good deal of trouble and of expense to the defaulters if simple Post Office notices were sent to them. My experience is that even if a post-card were sent, probably in 75 per cent. of these cases the money would come in, and there would be no necessity to saddle these people with the cost of a certificate. The Board of Revenue have already recognized the necessity and desirability of issuing post-card notices in certain cases, but the number of cases included in the Circular is very small. It does not include the Road Cess except where the rate of cess has been altered. The Circular is contained in Rule 21, section 3 of the Rules framed by the Board of Revenue under this Act, and runs thus:—

'To obviate hardship, District Officers are directed to notify the existence of arrears before certificates are issued—(*a*) by putting up a list of defaulters in their offices, and (*b*) by sending warnings to defaulters by printed post-cards (see Appendix C) in all cases in which there is no reason to believe that the debtor has had intimation of his liability. In the case of Road Cess and Zamindari Dak Cess collections, this procedure will probably be unnecessary, except in the rare instances in which the amount of the demand has recently been changed.'

"Most of our certificates are issued for realization of Road Cess: I may almost say that the certificate exists for realization of Road Cess. I was looking into the figures in Burdwan the other day, and I found that out of about 10,000 certificates

dealt with in the current year, very nearly 9,000 related to Road Cess. My contention therefore is, that such post-card notices are most necessary in the case of Road Cess. My desire is, that notices should be sent in *all* cases before certificates are made. I may mention that in Burdwan we have travelled a little beyond the letter of the Board's Circular and have issued notices in all cases. The result has been very successful, for I find that within the last five months 1,119 defaulters paid up the amounts they were asked to pay by post-card, and were also good enough to pay in each case an additional pice, being the price of the post-card. So that without any expense to Government, we are able to realize a large amount and save the cost to the people and the trouble to our office, of making certificates. For these reasons I hope this amendment will be accepted, and that it will be made compulsory to send post-cards as a sort of warning to defaulters."

The Hon'ble MR. BUCKLAND said:—"I am afraid that I cannot hold out any hope of this amendment being accepted on the part of Government. All that the hon'ble member has said points to the extension or amplification of the Board's Circular on the point rather than to an amendment of the law. It is a very different thing, as we have heard just now, to issue an executive order and to put a direction into the law and thus stereotype it. Here we have an excellent executive order issued by the Board of Revenue, the object of which is very good as far as it goes; but the hon'ble gentleman thinks it should go further. There is nothing to prevent him from persuading the Board of Revenue to extend the scope of the Circular without putting it into the law. I see no reason why he should not try to influence the Board of Revenue in this way, but it is entirely a different thing for us to put a provision of this sort into law; because if you once put it into the law, it would allow the thin edge of the wedge to be inserted for all kinds of complications. As soon as a certificate is filed it has the force of a decree. It has been deliberately enacted that Government has a right to adopt this summary procedure for the recovery of sums due to itself, and by this procedure all the preliminary steps prior to a decree are waived; and, for this reason, that the demands for which certificates are issued are well known. We must consider how many complications may be introduced directly we begin to introduce any preliminary steps and make them obligatory by law. We should have to prove that the notice by post-card reached the individual to

whom it was addressed, and then we have the suggestion made that preliminary evidence should be recorded—and the hon'ble gentleman will allow me to remind him that in his report he made this suggestion—that no certificate should be issued without this first step being taken. Thus we should have a procedure before the issue of the certificate, and I do not know what other complications might not be introduced. I think I am right in saying that we should have to prove the receipt of the notices. What is there to compel the addressee to give a receipt? [The Hon'ble MR. R. C. DUTT said:—"I meant the receipt of the issuing Post Office."] What guarantee is there that the receipt of the Post Office will be accepted as evidence that the notice reached the addressee? We should have to prove the arrival of the notice at the hands of the addressee; we should have the postmen called in, and they would thus be taken away from the performance of their legitimate duty of serving letters, and would be constantly hanging about the Courts to prove the receipt of a number of preliminary notices with which we now dispense. But the matter will stand on quite a different footing if notices are issued in all cases, including Road Cess, by executive orders in extension of the existing orders. Then, if the notice fails to reach its mark, the certificate process can go on all the same, but it is a serious objection to impose by law all this preliminary trouble upon our already overburdened officers."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"This amendment raises a very important question—a question which, while it combines simplicity and usefulness, strikes at the very root of the complaint raised against the certificate system. The issue of a notice before a certificate is made will tend very largely to avert a great deal of the inconvenience and annoyance which, it is believed, follow in the wake of the certificate procedure. The issue of the notice is in itself the easiest thing imaginable, and no serious objection could be imagined against the proposal for the issue of such a notice. But objections have been raised, and it is necessary, therefore, to see whether the proposal should be entertained. Some of the objections raised by the hon'ble member in charge of the Bill do not appear to me to present serious obstacles against the reception of the amendment. If the issue of a notice is desirable in itself, no Post-Office difficulty need trouble our minds; but I submit that, as a matter of law, no difficulty exists in connection with any steps relating to the issue of the notice, because the receipt given

by the issuing Post Office would, by a natural presumption, lead to the inference that the notice was duly received by the party to whom it was addressed. The question, therefore, not being surrounded by any consideration of embarrassment, we revert to the question itself, and the first matter to enquire is whether a notice is necessary or desirable before the making of a certificate. Upon that, I submit, there should not be two opinions. Of persons who make default in payment, a large body consists of those whose default is not wilful. To such a body the notice would be most welcome, whilst the issuing of the notice would not increase the work of the Collector to any appreciable extent; nay, rather the work of the Collector would be diminished in proportion as the issue of the notice would reduce the list of default, and obviate the necessity of making of the certificate and carrying it through. Even in cases of persons whose default is wilful, the notice would serve to remind them of their default, and therefore in some of those cases also it is possible to imagine that the necessity to make a certificate might be removed. Altogether, I submit, it is in every way desirable that there should be a notice preliminary to a certificate being made."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I have listened attentively to the hon'ble member in charge of the Bill, but I have not been able to follow him in regard to the complications to which he referred. On the other hand, the hon'ble mover of the amendment has made out a very strong case. I know something about the service of these notices. In the year 1888-89 the estate of Sujamutha came under the management of the Court of Wards, and in the Bengali year 1295 I think it was, so many as 12,000 certificates were showered on the devoted heads of the raiyats, and the complaint which they urged in their petition to the Board of Revenue was that they had not in many cases received notices of certificates issued against them, and that their properties had been sold without their having received any intimation of the issue of the certificates. I have with me an extract from their memorial to the Board of Revenue, made in November, 1889, in which they say:—

'Further, in many cases no notices of the issue of certificates or of auction sale are received, and decrees obtained and their holdings put up to sale without their knowledge.'

"That was deliberately stated in their memorial. I had an opportunity of visiting the estate, and discussing the matter with a body of about 5,000 raiyats, and the one complaint they made was that the service of these notices was

made in the most careless and perfunctory manner. I submit that this amendment will afford an easy remedy, and it should be accepted by the Council."

The Hon'ble SIR CHARLES PAUL said:—"I confess that I am in sympathy with the hon'ble mover on this particular motion. It appears to me that the right of the Crown is to take action without previous notice, but inasmuch as it is provided in section 10, to take action without notice when a certificate is made, notice must be given, the mode of giving notice which is here suggested might be given. I do not say that two notices should be given, and I cannot understand that the giving of one notice should lead to any administrative inconvenience. And, inasmuch as one notice must be given, it does appear to me that it would be more logical to give the notice before making the certificate than after doing so. And in regard to the service of the notice, I do not think there will be such difficulty as the hon'ble member in charge of the Bill apprehends. The production of the receipt of the Post Office would be *primâ facie* evidence of the letter having reached its destination. Of course that evidence may be rebutted, but we have no reason to suppose that in every case in which people owe money they will deny the receipt of notice; and as this change of law is likely to lead to no serious administrative inconvenience, I approve of this amendment."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, said:—"Section 8 of the Bill gives the mere filing of a certificate the force of a decree; and under section 10 all the judgment-debtor's properties, moveable and immoveable, are attached in pursuance of such *ex-parte* decree, and if the judgment-debtor wants to sell any portion of that property for the payment of the demand, he cannot do so. I think it but fair and reasonable that before having recourse to this harsh procedure, the alleged debtor ought to have the notice which is proposed in this amendment. I can assure the Government from my experience that cases of intentional default are very rare. People do not, as a matter of fact, intentionally omit to pay Road Cess or Government Revenue, but only do so from want of proper information or forgetfulness. Therefore I think that this amendment is a move in the right direction, and ought to be accepted."

The Hon'ble MR. COTTON said:—"I should like to say one word to th Council in reference to this proposal. It appears to me that this is a proposa which comes in far more suitably in the form of an executive order than i that of a legislative enactment. I have seen enough of the working of th certificate procedure to be satisfied that in many cases it is an engine o oppression—that is perhaps rather a strong expression to use—but I mean tha the certificate procedure is no doubt productive of hardship in many cases. I is, therefore, incumbent upon the Government, which has this powerful engin at its disposal, to avoid issuing certificates whenever it can do so, and I quite agre with the Hon'ble Mover of the amendment that if notices are regularly given befor making certificates, it would have the effect of largely reducing the number o certificates. His own experience shows that in the Burdwan district thousands o persons in whose names these notices were issued paid up their dues without bein required to do so by the certificate procedure. I therefore entirely agree wit him that these notices should be issued, but I fail to see why a provision of thi kind should find a place in the Statute Book. It is eminently an arrangemen which ought to be provided for by means of an executive order. I desire t point out that if this were made the subject of legislative enactment, and if i were allowed to objectors to come forward and say, 'I did not get this preliminar notice,' it would add immensely to the difficulty of working the Certificate Depar ment and recovering demands. There would be nothing more difficult tha to prove to the mind of the Court that a preliminary notice of this nature had bee properly served. I look upon this preliminary notice as conferring an advantag upon defaulters by saving them from all the harshness and annoyance of a cert ficate, and therefore I am in favour of issuing such notices, but I would nc introduce such a provision in the Statute Book, as it might lead to a great de of doubt and difficulty."

The Hon'ble MR. LYALL said:—"I consider that the foundation of this pr posal, as stated by the hon'ble mover, is entirely incorrect. He assumes that great many of the demands covered by certificates are not known to the payee I assert the contrary. If we go over the list of the dues which can be recovere by certificate procedure. They are all well known; but notwithstanding tha in the majority of cases we issue notices, especially as regards embankment due I say that no demand is unknown to those who have to meet them. Ther is certainly no arrear of revenue or rent due to the Government which is nc

known to the payee. Then, as regards water-rate, a person who gets his field irrigated must know that he has to pay for the water. In the case of cesses, I am quite aware that there is some hardship, chiefly owing to the number of co-sharers in estates. Then, as to estates under the management of the Court of Wards, as in the case of rents due to the Government, every raiyat knows what he owes, and the amount has been demanded from him over and over again. Then, there are the zamindari dâk cess, famine loans, agricultural loans, land improvement loans, forest dues, and dues under the abkari law. All these are dues which are well known. Every man who takes out a license knows that he has to pay for his license on the first day of every month. I consider that it is entirely exceptional when a man does not know what he owes. On receiving notice of this amendment I called on the Collectors of the districts in which the greatest number of certificates are issued to report in how many cases notices were issued before the issue of certificates.

"I have received telegraphic replies from the Collectors of six of these districts, in which the greatest number of certificates are issued. In Darbhanga, in 145 cases postal notices were issued—all in embankment cess cases; in Midnapore, 3,542 notices were issued; in Burdwan, 21,473; in Gaya, 16 were issued last year and 7,841 have already issued in the current year; in Cuttack 172, and in Patna 500. These figures show that the orders which have been issued are not a dead letter.

"I turn now to another point. We are asked now to add another stage to the certificate procedure. In other words, we are asked to compel by law Collectors of districts, who are already overburdened with work, to issue as much as 150,000 notices year by year, or in other words, we ask them here to do about 150 times more work they have to do at present. It is very easy for us here to add to the burdens of Collectors of districts, but I know that they have an almost intolerable amount of work to go through, and what is now proposed to be added is, I submit, another piece of useless routine. The hon'ble mover has stated that these notices have been largely responded to. I take the figures of last year's Certificate Returns. I find that in 44,827 cases, which is about one-third of the 143,886 certificates issued, men paid up on the issue of the first notice. Is it probable that more men would have paid on receipt of a post-card than upon receipt of notices which bind their property? I say that the utmost which will be gained will be as much as is now gained under the notices at present issued, that is to say, about one-third of the debtors will

pay up. If this amendment is adopted, our Collectors and their offices, already overburdened with work, will be unable to cope with the large increase. Another point is that the notices now issued under the law bind the whole of a man's property, but the notices now proposed to be issued would bind nothing, but would afford a man the opportunity of disposing of his property, and thus diminish the collection of the Government dues. This is a point which should be taken into consideration before disposing of this motion. And, further, if this motion is adopted, you will throw the cost of those notices on the debtors. At present the notices which are given under executive order are given free of cost; but if this amendment is passed, you will throw the cost of these notices on the debtors, and thus add to the amounts they will have to pay. I maintain that as far as I have been able to look up the records of the last fifteen years, there has been no public demand for these notices, and I fail to see that any intimation of the nature proposed is necessary."

The Hon'ble MR. R. C. DUTT in reply said:—"A suggestion has been made that the addressees will refuse to sign the receipt; but all that will be necessary on my wording of the amendment will be to prove the sending of the notices by production of the Post Office receipt. It has been said by the Hon'ble MR. LYALL that defaulters do know the amounts due by them. I have no doubt that they do know this in regard to the dues to which he referred; but as regards road-cess dues, I believe I am correct in saying that in the case of a large number of petty holders, they do not remember that a small amount is due from them by a certain date. In the Hooghly district we have over 10,000 petty tenure-holders, the annual value of whose holdings ranges from Rs. 16 to Rs. 40 per annum, and the Road and Public Works Cesses due from these ranges from one Rupee to Rs. 2-8. That is a small amount due once a year, and it is possible they may forget to pay it. Under the present procedure they have not only to pay that amount, but a great deal more in the way of costs, and it is to avoid this that I suggest that post-cards may be sent beforehand. The fact that they have taken heed of such notices in many instances shows that it is not an inefficacious mode of recovery. With the permission of the President I will read to the Council a note on this subject, which I made in the course of a recent inspection in Burdwan. I there said:—

'Before sending requisitions for certificates, the Road Cess Deputy Collector sends post-card warnings to the defaulters in every case, under Rule 21, section III of the Board's

Certificate Manual, and the result is that many defaulters remit the money,—with one pice additional, being the value of the post-card,—by money order, and the issue of a certificate becomes unnecessary. I am glad to find that in October last, Road Cess was voluntarily paid by 853 persons on receipt of these post-cards; in January, such payments were made by 77 persons, and in the current month by 189 persons. The Deputy Collector has thus avoided having recourse to the cumbrous and harassing certificate procedure in 1,119 cases, within this half year by the issue of post-cards.'

"I gather from the remarks which have been made by the hon'ble member in charge of the Bill, and by the Hon'ble MR. COTTON that they are not unwilling to accept the amendment, but they would rather have it in the shape of an executive order. If that be so, I shall have no objection to withdraw this amendment on an assurance being given on the part of the Government that they will issue such an order."

The Hon'ble THE PRESIDENT said:—"I must compliment the hon'ble member on the excellent way in which he put his case, and I think the Council may be congratulated in having an official in their midst, who has been practically engaged in carrying out the work of this particular Act, and who has given a sympathetic and intelligent consideration to the matter. I do not think, after what he has already stated, that there is considerable difference between the views he holds and those of the Government; and though on the part of the Government I agree with the hon'ble member in charge of the Bill that this amendment, as a motion, should be opposed, yet I am prepared to meet the hon'ble member a long way and to undertake the issue of executive orders that Post Office notices should be sent, though not, I think, in all cases. I will ask the hon'ble member to have confidence in the Executive Government, and give them time to consider the matter with a little more leisure. I think such notices will be of no use in cases of *khas mahals* and Wards' estates. There we have establishments, the members of which go round to every village to collect the dues, and it is only when they fail to collect that they send in requisitions for the issue of certificates. In these cases the parties cannot be ignorant of their liabilities. On the other hand, it would be extremely useful to extend the present orders to all road-cess cases, embankment cess cases, and dâk cess cases—in fact, to all those cases in which a current demand exists, and it is possible that the debtor might forget, and would pay it if he had a reminder. But I think that what has been said by the Hon'ble MR. COTTON

and by the hon'ble member in charge of the Bill has forcibly shown that we should incur some danger by embodying the proposed provision into the law, and I accept with pleasure the proposal of the hon'ble mover of the amendment to withdraw the motion on the receipt of this promise and the assurance of the Government which I have given."

The Motion was then, by leave, withdrawn.

The Hon'ble MR. GHOSE, by leave of the Council, withdrew the motion of which he had given notice that, for section 10, the following section be substituted:—

'Before a certificate is filed in the office of a Certificate Officer under the provisions of sections five, seven or nine, such Certificate Officer shall issue to the debtor a notice in Form No. 4 in the Schedule hereto annexed, calling upon him either to pay the amount claimed from him, or to show cause within thirty days from the date of service of such notice why a certificate should not be filed against him.'

The Hon'ble MR. GHOSE, by leave of the Council, also withdrew the motion of which he had given notice that Form No. 4 in the Schedule and the sections relating to appeals be amended accordingly.

The Hon'ble Mr. R. C. DUTT moved that the proviso to sub-section (*2*) of section 12 be omitted. He said:—

"This is a new provision which has no place in the existing Act, and the operation of this provision is likely to be attended with a great deal of hardship to judgment-debtors. It requires that before a judgment-debtor can file his objection, he may be called upon to pay the full amount which is alleged to be due from him. I do not think there is any real necessity for this provision, and I think the working of it is likely to be attended with a great deal of hardship. I will state a recent instance which will show that the operation of this provision is likely to choke off reasonable objections and compel people to go to the Civil Court. Many villages in the Burdwan and Hooghly districts are irrigated by water from the Eden Canal, for which the Government realises a moderate water-rate. It is impossible for the Government to accept a contract from every particular villager whose fields are irrigated,

and therefore one or two leading men in every village come forward for the whole of the villagers and undertake to pay for all the villagers whose fields are irrigated. Either last year or the year before, a man who agreed on behalf of all the villagers to pay a large sum of money did not pay in advance, and the Engineer stopped the irrigation of that village altogether, and then sent a requisition for the collection of the rate for water which was not supplied. The man said he had been sufficiently punished by not getting water; why should he pay the water-rate over and above that. A case like this ought to be fairly gone into, but this new proviso may compel such a man to pay the whole of the money down before he can raise such an objection. This man had undertaken to pay for a number of co-villagers, and it would be impossible for him to get the money from his co-villagers who had not got the water, and he to pay it within 15 days. The new proviso is likely therefore to be attended with a great deal of hardship, and it is not practically necessary. Under the present Act we are succeeding in getting money from all defaulters who have money to pay, but if this new provision is enacted, it is likely to be very harsh in its operation."

The Hon'ble MR. BUCKLAND said:—"I do not know whether the hon'ble member who moves this amendment has noticed that it is not meant to be a compulsory provision, and the wording makes that very clear. In the case to which he referred I cannot imagine it possible that a deposit of the full amount would be demanded. But there may be cases in which a merely frivolous petition is put in to gain time, and in a case of that sort the Select Committee were of opinion that some reasonable course of action should be open to the Certificate Officer with the view of preventing the certificate procedure being practically laughed at. We have therefore provided that if the Certificate Officer sees fit he may call upon the judgment-debtor to deposit the amount, but not when the petition alleges payment in full, as the petition has to be verified in a special way and the verifier renders himself liable to very serious pains and penalties if he makes a false verification. Therefore, in that particular case we do not require the Certificate Officer to act on this provision, but we think it sufficient for the Certificate Officer to possess this power with a view to prevent the filing of frivolous objections. I cannot, however, suppose that it will often lead to such hardships as occurred in the unique case which the

hon'ble member has just mentioned. Therefore I think we ought to take this power in the Act, although it may not be necessary to often use it."

The Hon'ble MR. R. C. DUTT in reply said:—"The hon'ble member thinks it is not likely that the Certificate Officer will use this power in cases of the nature to which I have just referred. We should, however, remember that the Certificate Officer is responsible for the collections, and that he is naturally inclined to look to the collections first, and to leave other questions for consideration later on; he may, therefore, be tempted to ask the man to pay the amount before he will listen to the objection. It is better, therefore, to omit this proviso, and, as I have said, under the present Act we do not feel any inconvenience."

The Hon'ble Mr. LYALL said:—"I wish, with Your Honour's permission, to say a word in regard to the slur which the hon'ble mover of the amendment has cast upon the officers who are working the Certificate Act. I have found those officers do their duty strictly and in a straightforward way, and I should be wrong to pass over such an imputation as has been cast upon them by the hon'ble member."

The Hon'ble MR. R. C. DUTT explained:—"I certainly had not the least intention to cast any slur upon these gentlemen. I only said that an officer whose duty it is to collect is naturally inclined to look to the collections first. I have the highest respect for the class of Deputy Collectors from among whom Certificate Officers are appointed, and many of them are my personal friends, and I certainly never meant to cast any slur or imputation upon them."

The Hon'ble THE PRESIDENT said:—"The proviso which it is proposed to omit was suggested to us by the High Court, but I cannot say that I feel very strongly about it, and what has fallen from the hon'ble mover of the amendment shows that there is just a possibility of hardship attending its operation. I am sure, however, that the hon'ble member did not mean to cast any aspersions upon the officers who will have to exercise the proposed power. The Government would wish in respect of this amendment to be guided by the feeling of the majority of the Council."

[*Babu Surendranath Banerjee; Mr. Dutt.*]

The Motion being put, the Council divided:—

Ayes 7.	*Noes* 6.
The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.	The Hon'ble Mr. Wilkins.
The Hon'ble Maulvi Serajul Islam Khan Bahadur.	The Hon'ble Mr. Buckland.
The Hon'ble Mr. Ghose.	The Hon'ble Mr. Bourdillon.
The Hon'ble Babu Surendranath Banerjee.	The Hon'ble Mr. Lyall.
The Hon'ble Mr. Dutt.	The Hon'ble Sir John Lambert.
The Hon'ble Mr. Collier.	The Hon'ble Sir Charles Paul.
The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.	

So the Motion was carried.

The Hon'ble BABU SURENDRANATH BANERJEE, by leave of the Council, withdrew the motion of which he had given notice that in line 3 of the proviso to section 12, after the words "alleged in the petition" the words "or when he is satisfied that the objection is made in good faith" be inserted.

The Hon'ble MR. R. C. DUTT moved that the proviso to sub-section (*2*) of section 13 be omitted. He said:—

"This proviso enables the Collector to suspend proceedings for six months in cases of doubt. My only reason for proposing its omission is, that the proviso seems to me to be very vague. It does not lay down any special procedure, and it is not quite clear what is to be done after the proceedings before the Collector are suspended for six months. I may point out that there is a parallel provision in the Land Registration Act, to the effect that when a Collector has any doubt as regards a point of law, he may suspend his orders and refer the issues for the decision of the Judge, and then, on receiving the decision of the Judge, he may proceed accordingly. I do not find that such a provision has been made in this Bill, nor is there anything to show the intention of this proviso. Is it intended that the judgment-debtor should go to the Civil Court and prove a negative, namely, that nothing is due from him, or is it intended that the Collector should go to the Civil Court and find out whether any claim

can be legally made or not? If, on the other hand, it is proposed to make provision like that in the Land Registration Act, I shall be very glad to accept it."

The Hon'ble MR. BUCKLAND said:—"The form which this proviso should take was a matter of considerable discussion in Select Committee. We at one time thought of adopting almost exactly the words of section 55 of the Land Registration Act, that the Collector should refer the petition to the Civil Court. We discussed all the alternatives, but for some reasons we thought it better to adopt the present language. The Collector may refer the petitioner to the Civil Court, but the man may not go; so we thought the best form of provision to adopt was that the Certificate Officer should suspend proceedings, and that will give the petitioner the opportunity of considering the situation and going to the Civil Court during the six months. If the judgment-debtor does not go to the Civil Court during that time, then the certificate will become absolute. I am not particularly enamoured with the wording of the proviso, and if something better is suggested, I shall be happy to accept it; but I will repeat that, with section 55 of the Land Registration Act before us, we deliberately adopted these words as being the best under the circumstances."

The Hon'ble MR. LYALL said:—"I desire to add a word or two in explanation of the reason which influenced me as a member of the Select Committee in leaving the proviso as it is. Both the hon'ble speakers have referred to section 55 of the Land Registration Act. Under that Act a case is referred for the decision of the Civil Court, but under the Certificate Act there is no case to refer. We also had section 24 of the Partition Act before us, and under that section the proceedings are simply hung up for a certain time. All that we provide in the Bill is that the Collector, if he considers a case is a fit one for the decision of the Civil Court, shall hang up the proceedings and allow the parties to take it to the Civil Court, and himself go on with the proceedings under section 16 after that time lapses."

The Hon'ble MR. GHOSE said:—"It seems to me that the last suggestion made by the hon'ble member in charge of the Bill will meet the requirements of the case. The mere omission of the proviso will not attain the object which my hon'ble friend, the mover of the amendment, has in view. The proviso in the Bill is so worded that it makes no provision for the reference of the

petition to the Civil Court. In the Report of the Select Committee this matter is put thus:—

'The idea of referring hard cases to a Civil Court, which found place in the proviso to section 13, sub-section (2) of the original Bill, has been maintained in the corresponding provision of this Bill, but it is considered necessary to limit to six months the period within which the opportunity of bringing a suit may be taken.'

"The proviso does not say that a reference is to be made to the Civil Court, but the idea was that such a reference should be made in any case which, in the opinion of the Collector, is a fit case for the decision of the Civil Court. I cannot see any objection to say that the Collector when he thinks fit may refer a case to the Civil Court."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, said:—"I think this is a very wholesome provision, and that it ought to be retained. The reasons urged by the hon'ble mover of the amendment do not point to the omission of the proviso but to an alteration of its wording. If section 55 of the Land Registration Act can be made applicable, then the Collector would have power to refer the matter to the Civil Court. The existence of this proviso in the Bill will show that the hon'ble member in charge of the Bill is anxious to give the judgment-debtor every opportunity to show that he is not liable to the payment demanded from him."

The Motion was put and negatived.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in line 5 of section 15, the words "from the date of the determination of the objection" to the end of the sentence be omitted, and that in their place the following be substituted:—

'from the service upon him of notice under section ten, or, if he files a petition of objection under section twelve, from the date of the determination thereof, or, if he appeals under section eighteen, from the date of the decision of such appeal, bring a suit in the Civil Court to have the said certificate cancelled or modified on the ground that the arrears stated therein were not due by him.'

He said:—"There are two classes of judgment-debtors referred to in this Bill—one mentioned in section 6, the other in section 8. Section 6 of the Bill lays down the conditions as regards time within which a judgment-debtor may

bring a suit in the Civil Court to contest the certificate. Section 15 does the same as regards judgment-debtors mentioned in section 8. But the conditions are not the same. There is an important omission in section 15 of the Bill, which does not occur in section 6. Under section 6 a judgment-debtor may bring a suit to contest a certificate in a Civil Court within six months from the service of notice, or from the determination of the objection or the decision of the appeal by the revenue authorities. Under section 15, he may bring a suit within six months from the determination of the objection. What if six months elapse before the determination of the objection by the revenue authorities? Then he loses his right of contesting the certificate in a Civil Court. The object of this amendment is to place both classes of judgment-debtors as regards the time within which they are to bring a suit in the Civil Court on the same footing, so that section 15 may follow the lines of section 6. I hope the hon'ble member in charge of the Bill will see his way to accept this amendment."

The Hon'ble MR. BUCKLAND said:—"I am prepared to accept the greater part of the hon'ble gentleman's amendment, the object of which, as he rightly said, is to bring the sections 15 and 6 into harmony. On looking over the sections more carefully, I am not quite sure if I can accept the whole of the amendment. The last few words say, that a suit may be brought in the Civil Court to have the certificate cancelled or modified on the ground that the arrears stated therein were not due by him. Section 17 goes on to state the grounds upon which certificates can be cancelled or modified. I quite see that in section 6 (*2*) we have left in these words, but I am inclined to think that they ought to come out of section 6 (*2*) and not be inserted in section 15 as proposed by the hon'ble mover of the amendment. I think it will be bad drafting to adopt in other sections a different wording suggesting the possibility of other grounds on which a certificate may be cancelled or modified. There is also another point to which I should refer. The amendment refers to appeals under section 18, but it should be section 19."

The Motion was put and agreed to in the following amended form:—

That in line 5 of section 15, the words "from the date of the determination of the objection" to the end of the sentence, be omitted, and that in their place the following be substituted:—

'from the service upon him of notice under section ten, or if he files a petition of objection under section twelve, from the date of the determination thereof, or if he appeals under section nineteen, from the date of the decision of such appeal, bring a suit in the Civil Court to have the said certificate cancelled or modified.'

The Hon'ble BABU SURENDRANATH BANERJEE also moved that the following be added after clause (*b*) of section 17:—

'That in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged by a Collector or a public officer under the provisions of any Regulation or Act for the time being in force, the proceedings of such Collector or public officer were not in substantial conformity with the provisions of such Regulation or Act, and that in consequence the judgment-debtor under the certificate suffered substantial injury from some error, defect or irregularity in such proceedings.'

He said:—"Section 17 states the grounds upon which certificates may be cancelled or modified. Commenting upon this section in the present law, the Select Committee observe that they have amplified its spirit. My amendment follows the spirit of the modification recognized by the Select Committee. What I contend for is, that the certificate should be cancelled when there have been grave irregularities on the part of the Certificate Officer, attended with substantial injury to the party concerned. This is the existing law. I do not ask for the creation of technical difficulties in the way of the Certificate Officer, nor do I wish that the judgment-debtor should obtain any technical advantage, but what I venture to urge is, and I am perfectly certain that the Council will agree with me, that where there has been any grave irregularity on the part of the Certificate Officer, and the judgment-debtor has suffered any substantial injury therefrom, he should have some remedy. It cannot be the intention of the Government that irregularities of this kind entailing serious hardship or even loss should hold good in law, and I am sure the principle will commend itself to the Council."

The Hon'ble MR. BUCKLAND said:—"I am afraid I cannot promise to meet the hon'ble member quite so readily in regard to this amendment as I did on the last occasion. He asks us to restore a section of the existing Act, which has been deliberately cut out, more in deference to the opinion of the High Court than that of any other authority who has reported upon the Bill. The opinion of the High Court was that directly after a certificate has been filed the Civil

Court should intervene to enforce it. I wish to bring this clearly to the notice of the Council and that they will bear it in mind. They say:—

'If the intervention of the Civil Court be thus made before and not after the certificate is enforced, there would seem to the Judges to be no reason for setting aside the certificate on the ground of any irregularity; for if any irregularity has occurred of such a kind as to place the judgment-debtor at a disadvantage, the remedy would naturally be to delay the execution for a reasonable time.'

"We do not propose on behalf of Government to allow the Civil Court to undertake the execution of the certificate. We have always been of opinion that the Revenue Courts are just as capable as the Civil Courts to execute decrees; therefore we have accepted the principle of the High Court's suggestion that a certificate should not be set aside on the ground of irregularity, and we consider that the Revenue Courts will take as much care in the enforcement of decrees as the Civil Courts do. When we addressed the Government of India on the 29th May, 1893, on the subject of this Bill, we stated that we could not accept the High Court's suggestion, that execution should be carried out by the Civil Court, but we went on to say that:—

'The rest of the suggestions made by the High Court under this head appears to the Lieutenant-Governor to be eminently wise and sound. He further concurs in their objection to the double series of litigation which is now open to parties—one before the Revenue Authorities and another before the Civil Courts; and he adopts their view that there should be no setting aside of the certificate after it has been carried into effect, on the ground of irregularity, and that no objection should be taken on the ground of jurisdiction. No suit should be allowed to lie for the purpose of questioning the certificate or invalidating the sale thereunder. It is true that the Hon'ble Judges recommend this course only on condition that the execution case should be transferred, as above explained, to the Civil Courts; but Sir Charles Elliott submits that the same arguments apply to the present system, so long as the procedure in the Revenue Courts is as careful and accurate as that of any Civil Court, and follows the same procedure.'

"The proposal of the Bill is, that all these matters connected with the issue of certificates should be dealt with by the Revenue Courts who are perfectly competent to examine these questions thoroughly and carefully. There will be an appeal to the Collector, or to the Commissioner from original orders of the Collector, and there will be the revisional power of the Commissioner to ensure perfect regularity with regard to the issue of certificates. Therefore

we propose that in section 17 the grounds for cancelling or modifying certificates which will be open to the Civil Court should be confined to the grounds of previous payment or non-indebtedness. The use of the little word 'duly' in the beginning of the section will enable any Court to interfere if there has been any substantial irregularity. The section provides that no certificate duly made shall be cancelled, &c. If there has been any substantial irregularities in the making of a certificate, it can hardly be said to have been duly made, and if it has not been 'duly' made, it will be liable to cancelment or modification. There is of course the section in the Code of Civil Procedure which admits of a sale under a certificate being set aside on the ground of material irregularity in publication, but that refers to sales. We are dealing now with the question of cancellation or modification of a certificate, and we say that we have made sufficient provision to prevent any injustice or harm being done to the judgment-debtor when we provide that questions of irregularity should be considered by the Revenue Courts, the plea of non-indebtedness being dealt with by the Civil Court. I am therefore unable to accept this amendment.'

The Hon'ble MR. GHOSE said:—"I desire to point out that the suggestion of the High Court in regard to this matter is conditional on the Civil Court being allowed to intervene in the first instance."

The Motion being put, the Council divided:—

Ayes 9.	*Noes* 5.
The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.	The Hon'ble Mr. Wilkins.
The Hon'ble Mr. Womack.	The Hon'ble Mr. Buckland.
The Hon'ble Maulvi Serajul Islam Khan Bahadur.	The Hon'ble Mr. Collier.
The Hon'ble Mr. Ghose.	The Hon'ble Mr. Lyall.
The Hon'ble Babu Surendranath Banerjee.	The Hon'ble Sir Charles Paul.
The Hon'ble Mr. Dutt.	
The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.	
The Hon'ble Mr. Bourdillon.	
The Hon'ble Sir John Lambert.	

So the Motion was carried.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that the following be added to section 17 and marked clause (*d*):—

'Want of jurisdiction.'

He said:—"I move that section 17 be so modified that a certificate may be cancelled if it is made by an officer without jurisdiction. A certificate made without jurisdiction is really a certificate not 'duly' made: it is carelessly and perfunctorily made, and is therefore liable to be attended with hardship and injustice to the judgment-debtor."

The Hon'ble MR. BUCKLAND said:—"This provision was struck out of the law on the suggestion of the High Court. In making the remarks I made just now, I particularly drew attention to the fact that the High Court had coupled their suggestion about certificates irregularly made with a condition, and that we proposed to omit the condition while preserving their suggestion. I say this by way of explanation, because the Hon'ble MR. GHOSE appeared to think that I had not borne that point in mind, but in regard to this particular suggestion of the High Court, I may observe that they say nothing about the intervention of the Civil Court. They remark as to this point:—

'Nor would the Judges allow any objection to be taken on the ground of jurisdiction. They do not see why a debtor to the Crown should be permitted to raise questions, often very difficult to solve, as to the boundaries between administrative districts; and they would therefore limit his right strictly to disputing his indebtedness. If this system were adopted no subsequent suit should be allowed to lie for the purpose of questioning the certificate or invalidating the sale thereunder by reason of one or the other not being warranted by the Act.'

"That is quite a different matter to the question of jurisdiction which the hon'ble mover of the amendment has in view. 'Want of jurisdiction' is a comprehensive term which may include several things, but I understand that the High Court mean that if a certificate is 'duly' made, this plea of 'want of jurisdiction' should not be allowed to be urged, and there I intended to leave it."

The Hon'ble MR. WILKINS said:—"I think the High Court may have referred solely to territorial jurisdiction, not to the jurisdiction of an officer who has no power. I find it has been ruled by the High Court that the procedure laid down by Act VII (B.C.) of 1880 must be very strictly followed, and therefore

it is absolutely incumbent on the Court, in criticising the validity of a sale, to insist upon compliance with formalities, and one of the formalities is, that the officer has power to do certain acts which justify him in issuing a certificate. A certificate not 'duly' made is not only liable to be set aside, but is absolutely void, and the Hon'ble Judges are supported in that view by a decision of the Privy Council. Therefore a certificate issued by an officer who has no power to issue it is absolutely null and void, and we do not want this clause regarding 'want of jurisdiction'."

The Hon'ble SIR CHARLES PAUL said:—"To insert the words 'want of jurisdiction' will be to have a contradiction of terms. How can a certificate be made if there is no jurisdiction? Every certificate 'duly' made is made with jurisdiction: if it is not made with jurisdiction, it is not 'duly' made."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, said:—"With great respect to the learned Advocate-General, I will point out that the words of the original Act are [section 8 (*b*)]:—'Provided that no certificate duly made under the provisions of this Act shall be cancelled by the Civil Court otherwise than under one or more of the following grounds,' and one of those grounds is 'want of jurisdiction.' As the learned Legal Remembrancer said, 'want of jurisdiction' will no doubt make everything null and void, and it may not be necessary to mention this particular ground in the Act, but the difficulty is that this is one of the grounds specified in the original Act, and the omission of these words may create a difficulty."

The Hon'ble MR. LYALL said:—"As a member of the Select Committee I desire to state that I agreed to the omission of these words solely on the ground of tautology. We have the words 'duly made,' and we do not require the same thing stated again."

The Hon'ble BABU SURENDRANATH BANERJEE in reply said:—"If these words are omitted from the law now, the inference will be irresistible that 'want of jurisdiction' is not one of the grounds on which a certificate can be cancelled. If, under the present Bill, a certificate made without jurisdiction must necessarily be cancelled as a certificate not 'duly' made, I have nothing further to say; but

[*Babu Surendranath Banerjee; the President; Maulvi Serajul Islam; Mr. Buckland.*]

it has been pointed out that there would be a difficulty unless 'want of jurisdiction' was specifically stated as one of the grounds which would make a certificate null and void."

The Hon'ble THE PRESIDENT said:—"I think this motion stands in a very different position from the amendment which the Council has just accepted. There it would have been possible that grave and substantial injury might have been suffered; here we have only the removal from the mouth of the objector of a technical objection. No real injury will be suffered by the judgment-debtor, but he will have this technical advantage which I do not think he should have."

The Motion was put and negatived.

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, moved that in line 1 of sub-section (*1*) of section 19, after the words "an appeal from any order" the word "whatsoever" be inserted. He said:—

"I am not sure that I am happy in the wording of my amendment. My object is to make the law self-contained, as the hon'ble mover of the Bill himself desires. If that is our object, then section 19 ought to provide for appeals against orders of every kind. It has been decided by the Board of Revenue and by the High Court that the words 'any order' in section 16 of the present Act refer to orders under the preceding sections—appeals against orders passed upon a petition filed under section 12—and that it gives no jurisdiction as regards proceedings under section 19. That being so, the words 'an appeal from any order' will not cover an appeal against an order of sale. We are in this position that this section does not give a right of appeal against an order of sale; therefore I submit that some words should be added which will provide a right of appeal against an order of sale."

The Hon'ble MR. BUCKLAND said:—"It is simply a question of language whether the words 'any order' meant any order or not. I should have thought that 'any order' ought to be sufficient. I cannot find any difference between 'any order' and 'any order whatsoever.'"

[*Maulvi Serajul Islam; Mr. Lyall; the President.*]

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, in reply said:—"I will refer the hon'ble member to the Resolution of the Board of Revenue. Section 16 of the present Act is the same as section 19 of this Bill, the only difference being that an appeal from an original order of the Collector should be presented to the Commissioner within thirty days. But the true meaning of the section is to be ascertained by comparing it with the section of the old law which it superseded, namely section 23 of Act VII of 1868. The place of the section in the Act shows clearly that the appeals referred to there are appeals against orders passed on petitions filed under section 12, and that section 16 gives no jurisdiction as regards proceedings under section 19; so that a doubt is thrown as to whether the words 'an appeal from any order' refer to orders directing sales."

The Hon'ble MR. LYALL said:—"I venture to think that there is no real difference between the hon'ble member and the Select Committee. I fancy it is not his wish that every *ad-interim* order given by a Deputy Collector, in the course of granting a certificate, should be appealable: that no one can desire; but all the hon'ble member wishes is, that the provision should be so drafted that there shall be an appeal against orders of sale. I submit that there is no objection to that, and that it is only a question of drafting."

The Hon'ble THE PRESIDENT said:—"I understand the Hon'ble the Advocate-General's opinion to be that the addition of the word 'whatsoever' will not affect the question at all; that nothing will be gained by so doing, and that the words 'any order' necessarily include orders of sale or attachment, or order for imprisonment, or any order that may be passed."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, in conclusion said:—"My object has been very correctly explained by the Hon'ble MR. LYALL, namely, to give an appeal against an order of sale. If the language of the Bill gives a right of appeal in the case of orders of sale, I am willing to withdraw the motion."

The Motion was by leave, withdrawn.

[*Mr. Dutt; Mr. Buckland; Mr. Lyall.*]

The Hon'ble MR. R. C. DUTT moved that in sub-section (*1*) of section 19 for "15 days" the words "thirty days" be substituted. He said:—

"This is a re-enactment of section 16 of the Act, which allows an appeal from the Deputy Collector to the Divisional Commissioner. It has been thought necessary to make these orders appealable to the District Collector. I do not think that will make any difference in the working of the Act. Section 16 allowed thirty days to the judgment-debtor to prefer an appeal, but that has been cut down to fifteen days, presumably because the appeal now lies to the Collector and not to the Commissioner. That will make no difference to the judgment-debtor, because appeals made to the Commissioner from districts other than the Commissioner's head-quarters are made through the Post Office; so that an appeal to the Commissioner really does not require more time than an appeal to the Collector, and I do not see why the time should be reduced in the case of an appeal to the Collector."

The Hon'ble MR. BUCKLAND said:—"I am afraid the hon'ble member who moved this amendment can hardly have made a careful reference to the original Act. If he compares it with section 19 (*1*)(*a*), he will see that appeals from the officers named may be preferred to the District Collector within fifteen days. Then the section goes on to say that appeals from a District Collector's original order may be made within thirty days. I think the hon'ble gentleman is labouring under some mistake. I am not aware of any necessity for altering the existing law with regard to the number of days allowed for appeals."

The Hon'ble MR. LYALL said:—"On receiving notice of this amendment I looked up the time allowed in similar cases. I find that the general rule (Board's Rules, page 118) provides a period of fifteen days where the period is not regulated by law. Then, looking into certain enactments, I find that under the Land Registration Act (section 85) the period is fifteen days; in the Agrarian Disturbances Act the period is fifteen days; in the Partition Act, when the matter is simply a question of fact, the term is fifteen days, but when a question of law is concerned and the party has to consult his legal advisers, the term is extended to thirty days. In the present case it is well to have a rapid appeal to decide the question whether money is payable or not, and I see no reason for extending the period of appeal from fifteen to thirty days."

[*Mr. Dutt; the President; Babu Surendranath Banerjee; Mr. Buckland.*]

The Hon'ble MR. R. C. DUTT in reply said:—"I am afraid I did not sufficiently explain myself. Under the existing law, 'Collector' means a Deputy Collector in charge of certificate work. That is the definition of 'Collector.' Under section 4 of the Act, any Deputy Collector who performs the work of a Certificate Officer is a 'Collector,' and appeals from his orders are preferred to the Commissioner within one month. Under the wording of this Bill, the Deputy Collector in charge of certificate work is not a 'Collector,' but only a 'Certificate Officer,' and the appeal to the District Collector from the Certificate Officer must be made within fifteen days. That will be really tantamount to reducing the time of appeal from the orders of the Certificate Officer from thirty days to fifteen days. I submit that this reduction of time should not be allowed, and that this amendment should be accepted."

The Hon'ble THE PRESIDENT said:—"I think it must be admitted that although there has been a change in the name of the Certificate Officer, the person who will be the Certificate Officer will be the same as at present. An appeal within the district is to be made within fifteen days; an appeal to the Commissioner outside the district is to be made within thirty days. In that respect no change has been made."

The Motion was put and negatived.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in clause (*b*) of sub-section (*1*) of section 19, the word "original" be omitted. He said:—

"The object of this amendment is to give a right of appeal from orders passed by the Collector as an Appellate Court to the Commissioner of the Division. Under the Bill, only original orders passed by the Collector are appealable. I want to give the judgment-debtor double protection—first by allowing him a right of appeal from the Certificate Officer to the Collector, and then an appeal from the Collector to the Commissioner of the Division. I think he enjoys that privilege now, and no case has been made out for depriving him of it."

The Hon'ble MR. BUCKLAND said:—"I must oppose this motion. There will be ample provision for the prevention of injustice if one appeal from the orders of a Certificate Officer is allowed to the District Collector, and a

[*Mr. Buckland; Babu Surendranath Banerjee; the President; Maulvi Serajul Islam; Mr. Dutt.*]

revisional power is vested in the Commissioner, with a right of appeal from the original order of a District Collector to the Commissioner. The matter has been carefully thought out, and it is considered most desirable that such cases should be brought to a conclusion, and that when opportunity for one appeal is given, there should be an end of it. The idea of allowing two appeals should not be encouraged by the Legislature. It is not that I wish in the least to prevent people from getting their rights, but when a man has had an appeal and can move the Commissioner for a revision, I think he has had ample opportunity for getting justice done to him. I think it would do more harm than good to multiply opportunities for appeal. If I thought there would be a greater chance of justice being done, no one would be more ready than myself to accept this amendment, but I think the judgment-debtor is sufficiently protected by one appeal to the Collector and the revisional power of the Commissioner. He has also power to file a suit in the Civil Court."

The Hon'ble BABU SURENDRANATH BANERJEE in reply said:—"I am not convinced. Opportunities for appeal mean so many safeguards. I am not in favour of multiplying appeals; but as this privilege is one that I understand is allowed under the existing law it appears to me that no case has been made out for withdrawing it."

The Hon'ble THE PRESIDENT said:—"I think the hon'ble member is making a mistake. Under section 19 of the existing law no appeal is allowed as a matter of right from the Collector in appeal, and we are maintaining the existing state of things."

The Motion was, by leave, withdrawn.

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, by leave of the Council, withdrew the motion of which he had given notice, that the following proviso be added after sub-section (*1*) of section 19:—

'Provided that in either case the time requisite for obtaining a copy of the order shall be excluded.'

The Hon'ble MR. R. C. DUTT, by leave of the Council, withdrew the motion of which he had given notice, that sub-section (*2*) of section 19 be omitted.

[*Babu Surendranath Banerjee ; Mr. Ghose ; Maulvi Serajul Islam ; the President ; Sir Charles Paul.*]

The Hon'ble BABU SURENDRANATH BANERJEE, by leave of the Council, withdrew the motion of which he had given notice, that in line 1 of section 20, for the words "no appeal as of right" the words "an appeal to the Commissioner of the Division" be substituted, and that the concluding words of the section, commencing with the words "but the Commissioner may" to the end of the sentence, be omitted.

The Hon'ble MR. GHOSE moved that at the end of sub-section (*2*) of section 19, the words "other than the officer against whose order such appeal is preferred" be added.

The Motion was put and agreed to.

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, moved that in sub-section (*1*) of section 21, for the words "section eight" the words "this Act or any person claiming through him" be substituted.

The Hon'ble THE PRESIDENT said :—"Perhaps it will save time if I explain that the substitution of the words 'this Act' for 'section eight' is accepted by the Government. We have some doubt as to the utility of the words 'or any person claiming through him'."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, continued :—"The necessity for this amendment has arisen in consequence of a Full Bench ruling of the High Court concerning section 174 of the Tenancy Act, that the word 'judgment-debtor' mean judgment-debtor alone, and do not include an assignee or transferee. Therefore I wish to provide that either the judgment-debtor or his transferee or his heir should have the privilege of depositing the money, that is to say, that the privilege should extend to the judgment-debtor or his representatives."

The Hon'ble SIR CHARLES PAUL said :—"I think that, under these circumstances, the amendment should be accepted."

The Motion was put and agreed to.

[*Mr. Dutt; Mr. Buckland; Mr. Lyall.*]

The Hon'ble MR. R. C. DUTT moved that in section 22, the words beginning with "with interest" and ending with "and costs" be omitted. He said:—

"There has been some correspondence on this subject. The Legal Remembrancer was referred to, and he gave his opinion that interest falling due after a certificate is made cannot be included in it, and therefore the necessity arises of making a fresh certificate. I think the object of this provision is to avoid the making of a fresh certificate and to enable us to realize the amount due under a certificate with interest up to the date of realization. The difficulty is that when we make a certificate, we do not know when the money will be realised. It may take six months, it may take only one month. When the peon goes to the spot and the man pays the money, who is to calculate the amount of interest due up to that date and how is it to be realised? On enquiry I find that at present interest for small periods is not realised. If the money is paid within a month or two, we do not charge interest; but when the period extends over a year, a fresh certificate for the interest may be filed. But this section authorises the realization of any interest which may fall due between the date of the certificate and the date of the recovery of the money."

The Hon'ble MR. BUCKLAND said:—"The point of the objection raised by the hon'ble member is as to the calculation of interest up to the date of realization. I am quite willing to accept any form of words which will require the interest which has accrued to be specified in the certificate. I would certainly not leave it to be calculated by the peon from the date of the issue of the certificate up to the date of realization."

The Hon'ble MR. LYALL said:—"I think the object of the alteration proposed in this section has not been understood by the hon'ble mover of the amendment. He has quoted the opinion of the Legal Remembrancer. The change now proposed was made at the instance of the Board of Revenue in the interest of debtors in consequence of the opinion quoted. It seemed to the Board quite unnecessary to saddle debtors with the cost of two certificates when it is so easy in cases of delay in realisation to include the interest in the original certificate. It was never intended to allow a peon to realize interest up to the date of payment. All that was intended was that any sum entered in the certificate as interest and costs should be realized. That is the object of the alteration, but if the object has not been properly expressed, this wording of

the section be amended. There is no reason why the Government should lose interest when it is due. At the same time it is hard that on account of interest a man should have to pay the whole cost of a second certificate."

The Hon'ble THE PRESIDENT said:—"Perhaps the hon'ble member's object will be met if we undertake to issue orders confining the charging of interest to some considerable period of time, say six months. At present first a notice is served, then follows attachment and sale; when property is sold the nazir calculates the interest and realizes it from the proceeds. I think the hon'ble member's object will be satisfied if the Board will issue orders carrying out the idea he has in view."

The Motion was then, by leave, withdrawn.

The Hon'ble MR. BUCKLAND moved that in sub-section (*2*) of section 23, for the words "Chapters XIX and XX" the words "Chapter XIX (with the exception of section 310A) and Chapter XX" be substituted. He said:—

"I made some remarks on this subject this morning, and there is not much left to say. Section 310A was passed last year as an addition to the Code of Civil Procedure. It provides for an application by the judgment-debtor to set aside the sale on deposit of the debt, and the Council will find that section 21 of this Bill is very much on the same lines as section 310A, though it varies in some small details. We cannot have two sections of very much the same character on very much the same subject; we prefer section 21 of our Bill, and therefore we propose to omit section 310A from the incorporation in section 23 of Chapters XIX and XX of the Code of Civil Procedure. As I have already mentioned, it is within the competence of this Council to do this with the sanction of the Governor General previously or subsequently received under section 5 of the Indian Councils Act of 1892. I think this amendment will commend itself to the Council."

The Motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in sub-section (*2*) of section 23, for the words "to enforce such certificate and realize the amount recoverable thereunder" the following be substituted:—

'for enforcing such certificate and realizing the amount recoverable thereunder, and for setting aside any sale held in the course of such execution proceedings, for such reasons for which execution sales are set aside under the provisions of the Civil Procedure Code.'

[*Babu Surendranath Banerjee; Maulvi Serajul Islam; Mr. Dutt; Sir Charles Paul.*]

He said:—"As the Government has already intimated its acceptance of this amendment, it is not necessary for me to say anything in support of it."

The Motion was put and agreed to.

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, by leave of the Council, withdrew the motion of which he had given notice, that in sub-section (*2*) of section 23, for the words "to enforce such certificate and realise the amount recoverable thereunder" the words "in respect to such certificate" be substituted.

The Hon'ble MR. R. C. DUTT moved that the following proviso be added at the end of section 23:—

'Provided that if the amount of which a certificate is made under the provisions of sections five, seven, or nine, or any portion of such amount be not realized within three years from the date of the certificate, the certificate will cease to be in force in respect of such unrealized amount.'

He said:—"I admit that this amendment is not very happily worded. I shall therefore ask permission to withdraw it and to give notice of a fresh amendment empowering the District Collector to strike off all certificates which are absolutely hopeless and under which it is not possible to realise any money."

The Hon'ble SIR CHARLES PAUL said:—"I think there is no necessity for this amendment. The Lieutenant-Governor and the Board of Revenue can always give orders for the cancellation of certificates which are unrealizable."

The Hon'ble MR. R. C. DUTT in reply said:—"The practice is to keep these very old certificates in the Wards' department alive after we are convinced that their enforcement is practically hopeless. This practice only impedes work. I want power to strike off these certificates, even if proceedings in execution have been taken within three years. The difficulty lies in the fact that managers of Wards' estates will not consent to withdraw them. There are outstanding certificates in Burdwan of eight and ten years' standing, and when the estates are made over to their owners, these certificates remain, and owners will not consent to withdraw them."

The Motion was, by leave, withdrawn.

[*Mr. Ghose; Mr. Buckland; Mr. Wilkins.*]

The Hon'ble MR. GHOSE moved that in section 33, the words between the words "Provided that" and the words "be sent" be omitted, and that the words "whenever the debtor is not personally served the notice shall" be inserted. He said:—

"Practical experience has shown that peons very often do not go anywhere near the place of service, and make absolutely false reports of service. Hon'ble members will, I am sure, agree with me that greater confidence is reposed by the public on postal service than on service by peons. I do not see that there is any question of principle involved in this amendment which should induce the Government to oppose it. If by throwing a little additional work on the Post Office, we can make service more satisfactory, I think the object in view will be secured."

The Hon'ble MR. BUCKLAND said:—"I made some remarks upon this section in my opening statement, and I do not see any reason to alter what I then said, that in framing this section the Select Committee adopted the very last improvement of the Imperial Legislature, and, until we have some reason to believe that it does not work well, we are very loth to go any further. I think it will be very objectionable to make it compulsory to issue those notices by post; we have therefore made it permissive."

The Hon'ble MR. WILKINS said:—"I may point out that the mode of service of notice in section 33 is very similar to that for many years observed for service under the Civil Procedure Code, under which, in the case of persons of consideration, the Court may substitute for a summons a letter which may be sent by post or by messenger. This section goes a good deal beyond even the Code, for it empowers the Certificate Officer to send notice by post in any case, and not only when the person to be served with notice is a person of rank. If the order to send a notice by registered letter is made compulsory in every case in which personal service cannot be had, the judgment-debtor has only to refuse to sign the receipt, and then there will be no service at all; and even if the receipt is signed, there must be evidence to show that the judgment-debtor and not somebody else signed his name. There will be no evidence readily available to prove this, and the proviso to section 33 is intended to be made use of only under circumstances similar to those given in section 91 of the Code or

in other exceptional cases which may arise; and to such cases it should, in my opinion, be restricted."

The Hon'ble THE PRESIDENT said:—"I think that on the part of the Government I must agree with the view which has been expressed by the hon'ble member in charge of the Bill, that the most recent Act passed by the highest authority should for the present guide our proceedings, and that hereafter, if any defect is found in this mode of service, it will be time to alter it."

The Motion was put and negatived.

The Council adjourned to Saturday, the 9th instant.

CALCUTTA ;
The 8th April, 1895.

GORDON LEITH,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Reg. No. 25G—300—13-4-95.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 *and* 1892.

The Council met at the Council Chamber on Saturday, the 9th March, 1895.

Present:

The Hon'ble Sir Charles Alfred Elliott, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The Hon'ble Sir Charles Paul, K.C.I.E., *Advocate-General.*

The Hon'ble H. J. S. Cotton, C.S.I.

The Hon'ble Sir John Lambert, K.C.I.E.

The Hon'ble D. R. Lyall, C.S.I.

The Hon'ble J. A. Bourdillon.

The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.

The Hon'ble F. R. S. Collier.

The Hon'ble C. E. Buckland.

The Hon'ble C. A. Wilkins.

The Hon'ble Romesh Chunder Dutt, C.I.E.

The Hon'ble Surendranath Banerjee.

The Hon'ble L. Ghose.

The Hon'ble Maharaja Sir Luchmessur Singh Bahadur, K.C.I.E., of Darbhanga.

The Hon'ble Maulvi Serajul Islam Khan Bahadur.

The Hon'ble W. C. Bonnerjee.

The Hon'ble J. G. Womack.

The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.

THE PUBLIC SERVICE COMMISSION.

The Hon'ble Babu Surendranath Banerjee asked:—

Will the Government be pleased to state why effect has not yet been given to the recommendation of the Public Service Commission, which has

[*Babu Surendranath Banerjee; Mr. Cotton; Maulvi Serajul Islam.*]

received the sanction of the Secretary of State, to the effect that the post of one of the Under-Secretaries to Government should be given to a member of the Provincial Service? Will the Government now appoint a member of the Provincial Service to the post of an Under-Secretary to Government?

The Hon'ble MR. COTTON replied:—

"The decision of the Government of India and of the Secretary of State referred to by the Hon'ble Member is not to the effect that the post of one of the Under-Secretaries to Government should be given to a member of the Provincial Service. The orders go no further than to say that members of the Provincial Service are eligible for such a post.

"In making appointments of this nature the efficiency of the public service ought to be the first consideration. The proper performance of the duties of an Under-Secretary requires exceptional qualifications, and the Lieutenant-Governor has not been able to satisfy himself that any member of the Provincial Service is as well fitted to perform those duties as any of the officers he has hitherto appointed when one of these posts has fallen vacant."

TRANSFER OF THE CHITTAGONG DIVISION.

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, asked:—

Whether Government will be pleased to lay on the table the papers, if any, in connection with the proposed transfer of the Chittagong Division from the jurisdiction of the Lieutenant-Governor of Bengal to that of the Chief Commissioner of Assam, and to state on what grounds such transfer has been recommended by the Government of Bengal?

The Hon'ble MR. COTTON replied:—

"There are no papers which can be placed on the table regarding the proposed transfer of the Chittagong Division from Bengal to Assam. The question has been under consideration, but is not likely to assume a practical shape until the railway from Chittagong to Assam is open to traffic."

[*Maulvi Serajul Islam; Mr. Cotton; Mr. Dutt.*]

THE BEGUMGANJ MUNSIFI.

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, asked:—

Whether Government is aware of the great inconvenience and harassment which the people are put to in consequence of the transfer of the Munsifi at Begumganj, which had been in existence there for about 90 years, to the head-quarters of Noakhali, and whether it has been brought to the notice of Government that the people of the Begumganj chauki are prepared to pay for the erection of a pucka building for the *cutchery* house, if necessary; and whether in view of such hardship Government would be pleased to reconsider its decision with regard to the location of the said *cutchery*?

The Hon'ble MR. COTTON replied:—

"Begumganj is very close to the head-quarters of the Noakhali district, and when the Munsifi there was burned down the other day, it was decided by the Lieutenant-Governor, with the concurrence of the High Court, who were consulted in the matter, to transfer the Munsif's Court to the head-quarters of the district. His Honour is aware that petitions opposing this transfer have been sent in, signed by some of the people residing at Begumganj, but he does not believe that the inconvenience to them can be considerable, and he is satisfied that the policy of concentrating Munsifis as far as possible at the head-quarters of districts and subdivisions is desirable and beneficial to the administration of justice."

THE PUBLIC DEMANDS RECOVERY ACT, 1880, AMENDMENT BILL.

The Hon'ble MR. R. C. DUTT moved that, for the proviso to sub-section (*2*) of section 13 of the Bill to amend the law relating to the recovery of Public Demands, the following be substituted:—

'Provided that, if in the opinion of the Certificate Officer, the petition involves a *bonâ fide* claim of right, he shall refer the petition to the District Collector for orders, and the District Collector, if he is satisfied that a *bonâ fide* claim of right is involved, shall make an order cancelling the certificate.'

He said:—"I have taken the liberty of making one or two verbal alterations in order to adopt the usual legal phraseology. My object was fully explained

at the last meeting of the Council, and I need only briefly state now that the proviso to the section as it stands in the Bill is somewhat indefinite, and I want to make it clear that we do not intend to depart from the principle on which we have proceeded so long, namely, that a certificate shall issue only in cases where there is no question of right or title. There is a Board's rule which lays down this principle, and I have drafted the amendment so as to make it clear that this principle shall be adhered to."

The Hon'ble MR. BUCKLAND said:—"The Government are prepared to accept this amendment in the form in which it has been altered by the hon'ble member. Perhaps I ought to add a few words of explanation, and at the same time point out that the amendment is now slightly different from the proviso as it was originally drafted. The Government have been much influenced by the fact that the Board have for some time past issued and acted upon a Circular which involves the same principle as the amendment. The result will now be that if we have the concurrent opinion of the Certificate Officer and the District Collector that the petition involves a claim of right, then the certificate shall be struck off. The Government is of opinion that no harm will be done by this proviso, and in fact it makes more definite a ruling than that which we endeavoured to provide for by the proviso to section 13, clause (2). The original idea of referring the parties in these cases to the Civil Court came from the Board of Revenue, and the Select Committee adopted it in a different form of words. The original suggestion was that, if complicated or difficult cases arise, they should be referred to the Civil Court. Now, if this amendment is accepted by the Council, and if difficult and complicated cases arise which do not involve a claim of right, such cases will still have to be decided by the revenue authorities, but such complicated and difficult cases are so very few that they may be disregarded for all practical purposes. Therefore the Government are prepared to accept this amendment in the form of language adopted by the hon'ble member now."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, said:—"In regard to the amendment, I submit that it is in perfect order, and is a workable amendment such as it is desirable to have in the Statute Book."

The Motion was put and agreed to.

[*Maulvi Serajul Islam ; Sir Charles Paul ; Mr. Buckland.*]

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, said:—"With Your Honour's permission, I beg to move an amendment of a formal character. I may remind the Council that at the last sitting I had the honour of moving an amendment in connection with section 2 of the Bill. What I then urged was, that the omission of certain words from section 2 of the Act created a difficulty as regards the right of appeal by a person whose property has been sold under the Act, and that a doubt was raised in consequence of a ruling in the case of *Sadoo Sawaree* (?) I further pointed out that under a Resolution of the Board of Revenue, Messrs. Cockerell and Reynolds presiding, in connection with section 16 of the Act, they concluded from the position of the section that it did not give a right of appeal to a person whose property is sold. Therefore I moved at that time that some words should be added to one of the sections of this Bill to remove the difficulty, but at the suggestion of the learned Advocate-General I withdrew the motion. But now an addition has been made with regard to sales to make the procedure of Chapter XIX of the Code of Civil Procedure applicable to sales under this Act. That Chapter, however, does not deal with appeals; so that at present there is no right of appeal provided by any section except section 19. If the words in section 19 be construed as giving an appeal in all cases, there will be no difficulty; but as there has been a ruling that the Legislature did not intend to give a right of appeal in case of sales, I now beg to move that the position of sections 19 and 20 be changed, and that they be placed at the end of the Bill."

The Hon'ble SIR CHARLES PAUL said:—"I at first thought that the section was far from being doubtful, but I have since been considering the matter, and I think the hon'ble member is right, and that it will be desirable to put those two sections at the end of the Bill."

The Hon'ble MR. BUCKLAND said:—"In deference to the advice of the learned Advocate-General, I have no objection to offer to the arrangement of the sections now proposed. The motion has been sprung upon us at the last moment, and I am not prepared to contest it myself."

The Motion was put and agreed to.

[*Mr. Buckland ; the President.*]

The Hon'ble MR. BUCKLAND moved that the Bill, as settled in Council, be passed. He said:—

"After the full consideration given to this Bill, section by section, and after the longthy debates which took place at the last meeting of the Council, I think I may claim that this little measure has been fully and thoroughly threshed out, and I should be doing wrong in taking up the further time of the Council by recapitulating what we have already done."

The Motion was put and agreed to.

THE LAND RECORDS MAINTENANCE BILL.

The Hon'ble THE PRESIDENT said:—"Before calling upon the Hon'ble MR. BUCKLAND to bring forward the next motion which stands in his name, I may mention that notice of an amendment has been given by the Hon'ble BABU SURENDRANATH BANERJEE, which I think is out of order. His proposal is, that the motion to refer the Bill to provide for the maintenance of the Records of Rights in Bengal to a Select Committee be postponed until the Bill has been redrafted. I have already pointed out to the hon'ble member, and now mention for the information of the Council, that there is no way of redrafting the Bill except by referring it to a Select Committee. Whatever suggestions hon'ble members may make now will be brought to the notice of the Select Committee, and they will have the power of redrafting the Bill and making any amendments in it they may desire. I understand the Hon'ble BABU SURENDRANATH BANERJEE accepts my interpretation, and is prepared not to make the motion, but to bring forward for the consideration of the Select Committee whatever proposals he has to make."

The Hon'ble MR. BUCKLAND said:—"In rising to speak to the motion which stands in my name, I shall only remind the Council that a similar motion was before the Council a fortnight ago, and I hope that during the fortnight which has elapsed since the consideration of this Bill was postponed they have had time to consider the numerous reports we have received. We have received valuable suggestions from the Hon'ble Judges of the High Court and independent Associations, also some very useful and very helpful, and some perhaps

somewhat impracticable, but on the whole the reports contain a very valuable amount of criticism, which, speaking on behalf of myself and the members of the Government concerned, we cordially welcome. We also have had to consider these reports, and to provisionally make up our minds as to which are worthy of consideration, and which of them can be accepted and which we must decline to accept. But the general conclusion to which we have arrived is, that many of these points will be better discussed in Select Committee. In some cases the criticisms are directed merely to mistakes in drafting, and in others they have merely called attention to little slips and obvious omissions. There are, of course, other debatable points on which it is open to the many gentlemen reporting to hold as many different opinions. Many of the criticisms are directed to show that the Bill as it has been drafted is not a perfect one; that we are quite willing to admit, as we never expected that it would be so regarded. It has always been put forward as a tentative measure in which we expect the co-operation of the Council and the assistance of the classes which will be affected by it.

"The object of the Bill is to take a great step in advance in the registration of tenant rights, and this is not an easy matter to carry out; it is the first time that such an attempt has been formally made in this Council, or, as far as I know, by any Legislature. Many of the principal Acts which are now to be found in the Statute Book have had to go through several editions before they have arrived at anything like maturity. There have been several editions of the Registration Act, and it is perhaps not even yet perfect; there have also been several editions of the Codes of Civil and Criminal Procedure, and the Penal Code has been constantly amended. Therefore we cannot take to ourselves any reproach if this measure which we have now launched is not perfect at all points, and we admit candidly that it is not perfect. But we hope with your co-operation to make it as workable as such an Act can be made, by foreseeing as far as possible objections which can be taken, and doing all we can to anticipate difficulties which are likely to arise in working the measure.

"When I introduced the Bill in Council on the 19th January last, I made some general remarks with regard to the principles of the Bill, somewhat amplifying the Statement of Objects and Reasons which was then presented. I will with your permission to some extent recapitulate what the main principles of the Bill are. Its fundamental principle is that it aims at enabling a record of

changes in tenant rights to be maintained automatically, and this it is proposed to do by the establishment of a number of registration offices, and by making it easy for tenants to appear and to register under this Act their transfers and successions, at the same time imposing upon them certain disabilities by way of stimulus to them to encourage them to come forward and register their mutations of tenant rights. The method which it is proposed to adopt to effect this object is somewhat similar to that contained in the Land Registration Act, which records transfers of proprietary rights in what is known as Register D, and from that register Register A of revenue-paying estates and Register B of revenue-free estates are written up from time to time. The *modus operandi*, if the Bill is passed in its present form, or some similar form as we expect it to be, is to fuse together the systems of registering deeds and of recording transfers of proprietary rights. We propose to adopt the main procedure of the Registration Act of 1877, and to use it so as to get mutations of tenant rights registered under this Bill. The idea is that, where it is compulsory to register a deed now, the registration of mutations should also take place. We also propose that where it is not compulsory now to register a deed, a notice of a transfer or a succession should be filed and registered; and it is further proposed that this notice should be made in a form which should contain all particulars necessary to show what transfer or succession has taken place, and that this notice of mutation should take the place of a deed which would otherwise be registered under the Registration Act. It is not intended in any way to make any revenue out of this Act, but it will be necessary to require certain little charges in the shape of fees to be paid in order to defray the cost of the establishments involved. The question of fees I will allude to at a later stage of my remarks.

"These are the main points of the first part of the Bill. When I introduced the Bill on the 19th January, I mentioned that the opportunity had been taken to provide an alternative procedure for the apportionment of the cost of settlement and survey—an alternative procedure to that contained in section 114 of the Bengal Tenancy Act. That principle has been adopted, as I will afterwards explain, on the recommendation of SIR ANTONY MACDONNELL, who was acting as Lieutenant-Governor in 1893. The idea is to provide for the apportionment of the cost of survey and settlement among the parties interested, and to impose upon the zamindar the duty of collecting the share due from the raiyats unless it is collected by the Settlement Officer in the first instance.

[*Mr. Buckland.*]

"These are the main principles of the Bill; and with the permission of the Council, I will now go more particularly into the various sections, alluding as may appear desirable to some of the reports and opinions which we have received. On section 2, the Interpretation clause, we have received various suggestions to the effect that more words and expressions should be defined than we have defined in the Bill. It is suggested, for instance, that we should introduce definitions of the words 'proprietor,' 'tenant,' 'holding,' 'village,' 'raiyat,' 'non-occupancy raiyat' and 'holder of estate.' These are very proper and useful suggestions, which will receive due consideration. It is also suggested that we should alter the explanation to be given of the term 'record of rights' so as to include what is known practically as a record of rights, though it may not consist of the documents known as *khewat* and *khatian*.

"In section 3 of the Bill it is proposed that all Registrars and Sub-Registrars under the Registration Act shall be Registrars of Mutations under this Bill. It has been suggested that Registrars of Mutations for the purposes of this Bill should be persons who should not also be Sub-Registrars under the Registration Act. That suggestion has not commended itself to the Government. The idea is, that all Sub-Registrars under the Registration Act should have this extra duty of registering mutations imposed upon them, and not that Registrars should be appointed for a limited purpose only.

"Section 4 has appeared to many gentlemen and Associations to provide a procedure for doing very much the same work as that which is already done under the Land Registration Act. That is no doubt to some extent true. The object of the section is to provide facilities for the better use and application of the Land Registration Act. It has been thought that persons having proprietary interests would be more willing to go a few miles off to a Sub-Registrar under this Bill, and there give notice of a change of proprietary right, than if they had always to go to head-quarters. The idea has been that when a proprietor acquiring a right, or a manager coming into his charge, has got a notice of this sort to give, he might give it at the local office, and that the notice should there be taken charge of and the registration effected for him. It is perhaps a question, not whether this duplicate procedure, is necessary, but whether it is desirable. It is known to the Council that the Land Registration Act has not been as much used as it might have been. Numbers of proprietary rights have escaped registration which it would be very desirable to include. In fact the object of this section is to afford facilities for the registration of

proprietary rights. The attitude of Government towards this section of the Bill is that its adoption or rejection may well be open to argument, and that it may be fairly considered on its merits. At the same time many objections have been taken to the fact that under this section of the Bill only four months are allowed to a person who has to give notice, whereas under the Land Registration Act six months are allowed. That is perhaps also open to argument, but Government are inclined to think that the term proposed under this Bill should be limited to four months rather than extended to six months.

"I come now to section 5, which proposes to limit the use of section 43 of the Land Registration Act. Section 43 allows the Lieutenant-Governor to exempt by executive order the owners of small estates from the performance of the obligations required under the Act. By this section of the Bill it is proposed to provide that such exemption shall only be granted on the registration of mutation being effected in the Sub-Registrar's office. This, however, may as easily be done under section 43 by the issue of an order that no such exemption shall be made; therefore the Government do not attach much importance to this section (5).

"By section 6 we provide for periodical statements to be filed in Sub-Registrars' offices. It has called down much criticism, and sometimes erroneous criticism. It has sometimes been said that the road-cess returns are sufficient, and therefore no more periodical statements should be required under this section. I am afraid that some of the Associations who have reported on this Bill had very indefinite notions of what they were writing about; but with regard to this section, I may say that, while it is desirable to take this power under the Bill, it may be open to question whether it should be used. At present it is under consideration whether this power should be used so long as the Patwari Regulation, XII of 1817, remains in force. If it should happen that that Regulation should be repealed and the zamindar has no longer a patwari to provide for, it is considered that it will be reasonable to call upon him for an annual list of changes in the record of rights, and that this list of changes submitted by the zamindar should be compared with the registration of mutations, and any omissions corrected. This section as it stands by itself has been challenged by a Commissioner who reported upon it, and it has been suggested that some further provision ought to be made for a penalty in the case of an erroneous statement. That is a point which is well worthy of consideration by the Select Committee.

[*Mr. Buckland.*]

The present object is for Government to take power to call for these statements if necessary.

"Section 7 is perhaps one of the most important sections of the Bill. It provides for transfers of, and successions to, tenures and rights lower than tenures being reported to the Sub-Registrar. The intention is, as I said just now, that, where a registered deed is not compulsory, notice of transfer should be filed and take the place of a deed. In this section it has been attempted to provide that the notice shall contain the information that so and so has transferred his right in certain parcels of land specified by certain numbers, and that somebody else has purchased them, and that both the transferor and transferee apply for their registration. We do not provide in the Bill for the compulsory appearance of both the parties at the same time. When these parties appear and acknowledge the mutation, if no objection is made, on notice being given, it is intended that the mutation shall be registered. But if either party denies the transfer, then the idea is that the Sub-Registrar will refuse to register it and refer the parties to the Civil Court, and at the same time the transferee should be warned of the legal disabilities to which he is subject until he gets the mutation registered. It is not proposed to give the Sub-Registrar any judicial or quasi-judicial power to enquire into objections. It is also intended to provide that in the case of successions the party succeeding should announce to the Sub-Registrar the death of the person from whom he inherits, and should apply that he and his co-sharers (if any) should be registered in the place of the deceased. Provision is made in this connection that the notice shall be affixed in a conspicuous place in the village, calling upon any objector to appear within a certain time to prefer objections. I wish particularly to lay stress upon this point that it is not intended to give the Sub-Registrar any judicial powers. It has been said that they are not altogether qualified for such duties as it is proposed to impose upon them. The answer to that is that the duties which it is proposed to give to them to do are not more onerous or difficult than those with which they are already charged, provided always that they are not given any judicial powers. It is thought that the time which is given to an objector to appear, namely, fifteen days, will be sufficient, considering the small extent of circle to which a Sub-Registrar would be appointed. It is intended that provision should be made for reference to the original record to see whether the transferor has his name recorded all right in that or in the Register of Mutations. The idea is that a continuous record of successions and transfers should be kept

up, starting from the original record of rights; so that, if these mutation registers are properly kept, it will be possible for any one on inspection to see who has held this particular parcel of land from the time when the survey and settlement which is now in progress were made.

"Section 8 provides for a notification of the fact of transfer being made to the landlord. As I have said, the Sub-Registrar is to register transfers of tenant right under section 7: he is to do so if they are acknowledged to be accomplished facts. The legal question whether a right to transfer exists is not affected by this provision of the Bill. It is thought fair to provide for intimation to be given to the zamindar of such transfer having been made so as to enable him to declare whether he accepts the transfer or not. If he does not accept the transfer, it will be competent to him to take any steps he thinks proper to contest its validity, or he may ignore it and refuse to receive any rent from the transferee. It has been suggested that this provision will stimulate litigation and set class against class. The object of the provision is that the landlords should know what transfers are taking place, and should have due notice thereof. If they are not prepared to accept this provision, then Government will not oppose the omission of this section.

"Section 9 relates to the presumptive force of mutations in rent suits. It has been suggested that this presumption should apply more widely than to rent suits only; for instance, that it should apply to any judicial proceeding for possession. This is a question which is fairly open to argument, and deserves full consideration. Towards the middle of the section some words have crept in regarding registration under the Registration Act, which it would be desirable to omit, and to substitute the expression 'registered under this Act.' It is also suggested that it should be enacted that the presumption should only apply to undisputed transfers. That is a point also for consideration.

"I hardly need refer to section 10 regarding the specifications to be required in the notices of mutation, or to section 11, which gives power, formally, to the Sub-Registrars to keep any number of Registers, provided that two of them are Registers of Mutations.

"We have received hardly any criticism on section 12. Therefore I may pass on to section 13, which proposes to lay down that all Courts shall forward memoranda of decisions affecting landed property to the Sub-Registrars to enter in their mutation registers. But the High Court have called attention to the fact that a very similar provision to this was contained in Act XVI of 1864,

but after some years the practice was abandoned. I have looked up the history of the matter, and find the provision in section 45 of Act XVI of 1864, one of the early Registration Acts. It was a provision that all Civil Courts shall send memoranda of decrees affecting immoveable property to the registry office for registration. The same principle was reproduced in sections 41-43 of Act XX of 1866, another Registration Act; but when that Act came again before the Legislative Council and was formally passed as Act VIII of 1871, Mr. Frank Cockerell, who was in charge of the Bill, gave good reasons for giving up the particular procedure of these sections. It was found in both the Revenue and the Civil Courts to be impracticable, and it was eventually left to the persons affected by decrees to make their own applications to the Registrar for the registration of their new rights. The Government are much obliged for the criticism which has called their attention to this point; and as it was found unworkable some years ago, it is not proposed to revive it. The intention, therefore, is to allow section 13 to be cut out of the Bill.

"Section 14 applies to fees to be paid under the Bill. As I said just now, fees of some sort must be provided for to admit of the cost of establishment in the working of the measure, and it is impossible to say beforehand what fees should be exacted. Therefore it is proposed that this section should be amended by giving power to the Lieutenant-Governor to prepare a table of the fees payable for registration of mutation, for granting copies, and for any other object for which a fee should be required. It is proposed to revise this section and to give Government power to alter the table of fees as may be shown to be necessary from time to time. In sub-section (*c*) there is a little slip in drafting, where it is provided that the Register shall be open for inspection at all reasonable hours without the payment of a fee. This would repeal a provision of the Registration Act, and therefore it is proposed to enact that inspection of the Register shall not take place without a fee.

"Section 15, sub-section (*1*), contains a provision for a disability to attach to a proprietor who has failed to register a mutation. The fate of this sub-section very much depends on the fate of section 4, which refers to the mutation of proprietary rights. If section 4 is struck out in Select Committee, then probably it will be thought necessary also that section 15, sub-section (*1*), should be altered so far as it relates to proprietary rights. But if it is kept in, it has been suggested that it should not be compulsory on the proprietor to file

certified copies of the entry in the register in all cases of rent suits. It has been suggested that this filing of extracts from the records of rights and Register of Mutations should only be required if the tenant denies that the landlord has registered or when the Court requires it. There would be a considerable reduction of the direct disability on the landlord by this sub-section. But sub-section (2) stands on rather a different footing. This is the only disability we have been able to devise to bring some stimulus to bear on the tenant to give notice of mutation of his tenant right. The meaning of this sub-section is that, if a landlord sues a tenant to enhance his rent, it should not be open to the tenant to plead that he has a particular status or a privileged right unless he has complied with the provisions of section 7 of this Bill and given notice of transfer of his tenant right If the intention of the section is not clear, it will be open to the Select Committee to alter it in such a way as may be desirable.

"In section 16 we have provided a general penalty for failure to register mutations. Objections of course have been taken to this. Some people say it is superfluous; others that the fine is arbitrary and too heavy; and it has also been suggested that a sliding scale of fines based on the area or value of the holding should be substituted, and that provision should be made for rewards to be given to informers; also that a penalty should only be inflicted when the parties have voluntarily or negligently omitted to comply with the provisions of section 7 of the Bill These are questions of detail which may fairly be discussed in Select Committee. It has also been thought, if Government are prepared to accept it, that provision should be made to enable those to register who have omitted to register within four months; and that an opportunity should be given to repair the omission by payment of some small charge. This was foreseen in the Land Registration Act, and it may be considered fair to allow a *locus penitentiæ* to a person who has omitted to register his tenant right under this Act.

"I come now to Part II, which deals with the recovery of costs of the Survey and Settlement and the preparation of a Record of rights. It has been pointed out that more names ought to be added to the list of persons from whom a portion of the costs ought to be recovered; that the owners and occupiers of rent-free holdings should be added to the list of those from whom the cost of survey-settlement can be levied; also that a zamindar who has let his land out in *patni* should not be held liable. These suggestions well deserve the attention of the Select Committee, and will no doubt receive it at their hands.

[*Mr. Buckland.*]

"I will not pause now over section 18, which refers to the levy of a cess for the recovery of the cost. The more important suggestions we have received refer to section 19, which deals with the question of the levy of a survey-settlement cess. It has been suggested, for instance, that the proportions in which the cess should be levied from the different persons interested in the survey and settlement should be stereotyped in the Bill; and that the proportions which have been adopted by the Secretary of State in regard to the Bihar survey should be made generally applicable to all future surveys and settlements. This is hardly a reasonable suggestion, and the Government are not prepared to adopt it. Circumstances may vary between one settlement and another, and it is therefore thought right to leave the proportion of cost to be determined from time to time by high authority. This question of proportion will no doubt be subjected to full discussion in each case, and it is thought better to leave it open for that reason. The Council will observe that in this section there is a list of proprietors and tenants and owners and occupiers of rent-free tenures and holdings who may be called upon to pay this cess. It has been suggested that the list of persons who are to pay this cess should be identical with the list of persons upon whom the rate per acre is imposed. That is a matter of drafting, and can easily be arranged. Then, the distribution of the cess will be found to be referred to in the last four lines of the section. We have had for the last few years a number of important settlements to deal with, and it has been found practically that in no two cases have the cost of settlement proceedings been distributed in quite the same way. It has been found necessary to charge the different grades of persons interested in the proceedings more or less according as they applied for survey-settlement, and according as through their neglect or misconduct such settlement proceedings were really necessary, or according as they were more or less benefited by its operations. It is therefore thought right that the distribution of the cess should be made under rules to be framed from time to time by the Board of Revenue with the sanction of the Local Government. That would leave it open for the various circumstances of each case to be fully considered. With regard to section 20, it has been brought to notice that the amount leviable should not be payable only once annually with the instalment of revenue due on the 28th of March, but at other times of the year with other instalments of land revenue. That is a question on which the convenience of the payers may be fairly consulted. The 28th of March is hardly a good

date to fix upon because there are estates, I believe, which do not pay revenue on that date; but this is a point which, like many others I have mentioned, may fairly be considered in Select Committee.

"In section 21 the proposal that the cess should be paid by the landlord on behalf of the tenants is one which, as might have been expected, has called forth many and various criticisms. The proposal that the cost of the survey and settlement should be levied in this way emanated, as I have stated in the early portion of my remarks, from SIR ANTONY MACDONNELL in his long Minute of 20th September, 1893. I alluded to it briefly when introducing this Bill on the 19th January last, and I should like to refresh the memory of hon'ble members of Council by reading an extract from that Minute. He then wrote:—

'The method of recovering the cost of a Cadastral Survey and Record of Rights prescribed in section 114 of the Tenancy Act has been found by practice to be in some cases defective. It is suitable in the case of small estates; it is less suitable when large areas are concerned. In the latter cases it involves very intricate calculations, especially where subinfendation has gone to any considerable length: it must cause some, though transitory, inconvenience to the poorer classes of people by making the debt payable in a single instalment; and by necessitating the employment of a collecting agency of tahsildars, peons, &c., it not only adds something in the shape of fees to the original burden, but opens the door to the irregularities which the memorialists connect with the employment of low-paid and ill-supervised agency. To the preceding objections against the existing arrangements from the landlords' and raiyats' side might be added the additional objection from the side of the Government (which advances the cost of the operations), that when the expenses are divided among and have to be collected from several millions of people, there is risk of short collections, unauthorized exactions on the part of process-servers or collecting peons, and the certainty of intricate accounts and protracted proceedings. All these conditions point to the desirability of devising some means whereby the costs of the Cadastral Survey and Record of Rights may be recovered in such instalments as will not be felt by any party, and under such conditions that there will be no addition to the original apportionment and no opportunity for exactions on the part of a collecting agency.'

"As I explained on a former occasion, the idea of adopting the Road Cess Procedure for the apportionment of the rate has been abandoned, because it would be difficult to conform to the proportion which the Secretary of State has decided upon, namely, $\frac{1}{4}$th from the Government, $\frac{7}{16}$ths from the landlord, and $\frac{5}{16}$ths from the tenants. The plan which we propose to adopt is set out in this Bill, namely, that tenants should be called upon to pay at the time

the *khatians* are distributed to them, and that if they do not pay, the zamindar should be called upon to collect what is due from non-paying tenants, and pay it over to the Government, and that the zamindar should receive an additional 20 per cent. to cover their collection expenses. These provisions have been challenged on the part of the zamindars, who, of course, go back to the time of the Permanent Settlement, but I do not think anybody who has read the Proceedings connected with the passing of the Road Cess Act of 1871 can for a moment attach validity to any argument which is based on any condition of the Permanent Settlement. But other criticisms have been offered to the effect that we are calling upon the landlord to collect our bad debts for us, and not allowing him 20 per cent. for collecting what may be called good debts. I for one am not prepared to say that it will not be very hard on a tenant if Government were to refuse to receive a payment which he is willing to make, and to say that the zamindar will a month later collect from him Rs. 6, instead of the Rs. 5 which he is willing to pay. I am not at all prepared to accept that proposal. There are certain suggestions which Government are willing to entertain favourably; for instance, the proposal that these dues should be recoverable from landlords not by sale of their estates, but by the Certificate Procedure, of which we have heard so much lately.

"It has also been suggested, and Government are prepared to entertain the suggestion, that there should be a provision allowing the zamindar to make a requisition to the Collector, and that outstanding debts from non-paying tenants should be recovered on behalf of the zamindar by the Certificate Procedure. That of course will be a very great extension of the use of the Certificate Procedure, but it is one which is very fairly open to consideration, and it is one which Government is prepared to receive favourably. It will of course be necessary for Government, through its Settlement Officer, to give to the landlord a list of all the payments they expect the landlord to make on their behalf from non-paying tenants. That provision has not yet been introduced in the Bill, but there is no reason why it should not be.

"The whole question with regard to the recovery of these costs is,—what is the most convenient way by which they can be recovered? I am quite prepared to show the Council the reason why, when the Road Cess Act was passed in 1871, the duty of collecting was imposed upon the zamindar. The main point is that it is a matter of expediency. They have their establishments, and it is considered that on the whole the work will be more easily done by the zamindar

than by the Government having a separate establishment going about the country for this purpose. The Council is perhaps not aware of the enormous number of *khatians* which will have to be made. In a district of three thousand square miles there may be as many as 12 lakhs of *khatians* to be made, on the assumption that there are $2\frac{1}{2}$ plots to an acre and 4 plots to each *khatian*. To collect for 12 lakhs of *khatians* is rather a large undertaking. It has been suggested by the Commissioner of the Patna Division that if proper steps are taken at the time of the distribution of the *khatians*, there will not be any great amount of outstanding dues for recovery subsequent to the settlement proceedings. The Commissioner writes in a communication which is in the hands of the Council:—

'The subsequent certificate proceedings will, as a rule, be of a very simple character, for we shall have in the *khatians* a reliable description of the defaulter's immovable property, and there should be no difficulty in summarily realizing the amounts due by attachment of their holdings. It must be remembered that the dues will individually be very small—only a few annas per acre, and I have no doubt that the raiyats will pay up at once when they see that we mean business..... .....where a collecting officer can present himself with a bill in one hand and a warrant in the other, it will only be in cases of downright insolvency where he will fail to realise.'

"That points to the adoption of the plan of Government collecting at once by the Certificate Procedure from the raiyats at the time of the distribution of the *khatians*. I am in a position to state that Government does not attach very great importance to the section as it is now drafted; and that it is willing to accept any modification of it by means of the Certificate Procedure or otherwise, which would admit of these costs being recovered with the least possible annoyance and oppression of the people.

"The remaining sections of the Bill will not detain us very long. A slight alteration will be requisite in sub-section (*2*) of section 22, which provides that every order passed by an officer engaged in the registration of mutations in any district shall be appealable to the Collector of the district. It has been suggested that the appeal should be confined to orders affecting any entry in the register, but that is a detail which can be considered.

"With regard to appeals, some of the Associations who have reported upon the Bill have made valuable suggestions. Some of them object to the Commissioner's order being final; others suggest that an appeal should lie to

the Board of Revenue. No final conclusion has been arrived at by Government on this point, and it is a matter with which the Select Committee can properly deal.

"With regard to section 24, as to the power of making rules, it is certainly necessary that the power to do so should be retained in the hands of the Lieutenant-Governor—certainly as to the rules for regulating the fees to be paid. The clauses of this section speak for themselves. It must be open to Government to provide for the appointment, control, discipline and payment of all Registrars' and Sub-Registrars' establishments; and the Government must also have the power of prescribing the method and periods for making entries of mutations in the record of rights, and so on. These are matters which the Government must keep in their own hands, but it will be open to the Board of Revenue to make any suggestions they may think fit. There will be no necessity for the retention of sub-section (*c*), regarding rules for the distribution of the cess, if it is to be also provided for in the previous section (19). Nor will it be necessary to retain sub-section (*d*) if power is taken in section 14, as has been suggested, for Government to prescribe the fees to be levied, and to alter them from time to time as may be necessary.

"I must apologise for taking up the time of the Council at such length over this important measure, but I have done so in order to make clear to hon'ble members what matters Government will agree to omit from the Bill, what matters they are prepared to leave to the Select Committee, and how far in a general way they are prepared to go in making concessions to the criticisms which have been advanced. The necessity for the maintenance of a record of rights in some form or other has been asserted throughout the correspondence ever since the time the Secretary of State, in his Despatch of the 24th December, 1891, gave his sanction to the Bihar survey-settlement operations. The particular form which the maintenance of the records of rights should take has been the subject of discussion for some years past since it was first mooted, more particularly in the letter which the Government wrote in June, 1892. The main principles on which it is now proposed to take action have, I think, been sufficiently elucidated by the several opportunities I have had of making explanations in this Council, and by the Statement of Objects and Reasons before the Council. It therefore remains for me only to ask the co operation of the Council to enable Government to pass a workable and

practical measure, entailing as little harassment and trouble to the parties concerned as may be compatible with the maintenance of the records in some way or other. We hope that in Select Committee any further defects which may present themselves will be found out and rectified, and that, by the time the Bill comes back from the Select Committee, it will be accepted by this Council as a workable and practical measure for the object for which it is intended.

"With these remarks I beg to move the further consideration of the motion that the Bill to provide for the maintenance of the Records of Rights in Bengal and for the recovery of the cost of Cadastral Surveys and Settlements be referred to a Select Committee consisting of the Hon'ble MR. LYALL, the Hon'ble MR. WILKINS, the Hon'ble THE MAHARAJA OF DARBHANGA, the Hon'ble MAULVI SERAJUL ISLAM, the Hon'ble MR. DUTT and the MOVER."

The Hon'ble MAHARAJA SIR LUCHMESSUR SINGH BAHADUR OF DARBHANGA said:—"I desire to offer a few remarks upon the Bill which this Council is about to refer to the consideration of a Select Committee. In so doing I trust I may be allowed to say, in order to guard against any possible misconception as to my attitude upon the question, that I have not in any way withdrawn from, nor in any degree modified, the position taken up by me in the past with regard to the justice or desirability of either making or maintaining a Record of Rights in Bihar. I still hold, as I have always held, that any such scheme should only be undertaken with the cordial co-operation and the assent of those on whose behalf it is proposed; and that in face of the opposition manifested by all classes of the community in Bihar, the action of Government is inexpedient and, if I may say so with all due respect, altogether arbitrary. But I am compelled to bow to the inevitable, and to recognise the fact that, notwithstanding the strenuous objections and remonstrances of those affected, Her Majesty's Secretary of State has given his sanction to the proposal which has been embodied in the Bill now before us. Bearing in mind these preliminary observations, which I have thought it my duty to make on behalf of myself and of those whose interests I am privileged to represent, I come to a consideration of the Bill itself. I do not propose to enter into a lengthy criticism of Part I of the Bill. The system of registration which it provides is the best, inasmuch as it is the least burdensome of the schemes that have been in the contemplation of Government; and I am grateful to Your Honour for so far yielding, if I may so express it, to the wishes of myself and those who think with me.

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I cannot, however, conceal from myself that the proposal to utilise the services of the Rural Sub-Registrars for the maintenance of the Record of Rights has met with strong objection in influential quarters. But with due deference to the opinions of MR. FORBES and MR. D. J. MACPHERSON, I venture to think they have somewhat exaggerated the difficulties of the situation. Granting that the existing Sub-Registrars do not as a class give that satisfaction to which the Government as well as the Public are entitled, the true remedy, in my opinion, is to be found, as my friend Kumar Gopendra Krishna, the Inspector-General of Registration, remarks in considerably modifying the existing rules relating to the appointment of these officers. In any event, I am prepared to face those evils, if they can be said to exist. It is my deliberate opinion that the scheme propounded in the first part of the Bill is the most feasible under the circumstances; and it possesses, moreover, the merit of imposing no additional cost upon the tax-payer. The landlords and tenants of Bihar are deeply sensible of the consideration Your Honour has shown to them in this connection, and for your unceasing and unwearied advocacy of a proposal, which, whatever its defects, has this to recommend it that it relies in no small degree for its success upon the loyal co-operation of the people concerned: I trust I shall not be deemed presumptuous if I take it upon myself to give expression to their sentiments.

"There are, however, a couple of omissions in the earlier portion of the Bill to which I feel I should call attention. The first is, the omission of any procedure to be followed by the Registrars of Mutations in cases that may come before them under the Act. I submit that it is necessary, in the interests of those who will fall under the operation of the Bill, that some form of procedure should be clearly and carefully laid down by legislative enactment, and in the same Bill which confers new powers upon these officers. I trust it may be found possible for the Select Committee to add sections dealing with this important matter. While I am upon the point of procedure, I hope it will not be considered irrelevant if I give publicity to a criticism of the Bengal Chamber of Commerce, which appears to me to be well worthy of consideration. They say:—

'The Committee note that in sections 4, 6, 7, 8, 14, 19 and 24 power is given to the Board of Revenue to make rules and to do certain other matters. The Committee would protest against this transfer of what is clearly a duty of the Local Government to the

Board of Revenue, and, similarly, they further object to an appeal to the Board of Revenue being denied by section 23, whilst an appeal from the decision of a Collector is only allowed to the Commissioner. The Board of Revenue sits as a Land Court, and where this is so, work should not be taken from it and given to a local officer like the Commissioner: and in this connection, the Committee may remark that they view with much alarm the attempt made from time to time to transfer judicial functions to executive officers and to make the decisions of such officers final. They consider the policy of such transfers inexcusable, uncalled for and wrong, and holding this view, they object to power being taken from the Local Government, properly belonging to that authority, and given to the Board of Revenue; whilst authority is taken away from the Board of Revenue and given with finality to the Commissioner.'

"I do not desire to dwell further upon this question at the present stage; but I cannot quit it without expressing a hope that in this connection also the Council may see its way by judicious excisions and amendments, to removing these very reasonable objections on the part of the Chamber of Commerce. I would urge further that the rules made under the Act should, before being put into force, be published in the Gazette for a period of at least three months, and that they should in every case be subject to the approval of the High Court.

"The second omission to which I have to direct attention is referred to by the Secretary to the Bihar Indigo Planters' Association in terms so concise and complete that I will venture to adopt them as my own. 'The draft Bill,' writes MR. MACNAGHTEN, 'makes no alteration in the status of the village patwari. Indeed, the name of that official is not once mentioned in it. It should be clearly laid down, if such is intended, that the patwari, as a Government servant, has ceased to exist. The deputation that waited on His Honour the Lieutenant-Governor at Sonepore received the distinct assurance from him that on the completion of the survey and record, the patwari would cease to be a servant of Government; and in his letter to the Board of Revenue, dated the 31st of June, 1892, the intention to abolish the patwari is affirmed. In the words of SIR CHARLES ELLIOTT:—The patwaris have altogether failed to give satisfaction: they have long since ceased to fulfil the functions of a patwari under Regulation XII of 1817, and the present system of dual control has been universally condemned. And again:—It is mainly from this point of view that SIR CHARLES ELLIOTT is of opinion that the first step is to clear the ground by the repeal of Regulation XII of 1817, and the abolition of patwaris as a class of Government servants in Bihar. Section 6 imposes a heavy burden on zamindars and tenure-holders. Under the Road Cess Act, *jamabandi* papers are

signed by the landlord or tenure-holder, while the real responsibility should rest on the patwari, who is not a private servant. If under section 6 the whole responsibility is to rest upon the landlord, he should have entire control of the patwari.' The Tirhut Landholders' Association and the Indian Property Association express themselves in similar terms: and these important bodies are considerably strengthened in the position they take up by the observations of the Secretary of State in his Despatch of the 5th of July last. In that Despatch, he remarks, with reference to the alternative schemes for the maintenance of the Record of Rights which were put forward by Your Honour and SIR ANTONY MACDONNELL:—

'There are two features common to both schemes. The first is that the patwaris, as established by Regulation XII of 1817, should be abolished and the Regulation repealed, on the ground that the patwaris have failed to perform for the villages, for the raiyats, or for the district administration, the services contemplated by the Regulation, while their dual relation to the Collector and to the Zamindar interferes with their usefulness to the landlords whom they served. As at present advised, I see no objection to the proposed repeal.'

"At the close of the Despatch there is a further reference to the subject: when it is expressly ordered that 'provision should be made for repealing the Patwari Regulations in the Bill for the maintenance of the Record of Rights which Your Honour was authorised to introduce into this Council.'

"I have not ventured, Sir, to impose this series of quotations upon the good nature of Your Honour and of this Council without a purpose. Your Honour's declarations on the question of the abolition of the patwari are so explicit, the sanction accorded by the Secretary of State to the proposal is so express and so unambiguous, that I cannot refrain from giving expression to my respectful astonishment at the fact that it finds no place in the Bill we are now considering. I would urge that effect should be given to the pledges of Government upon this point, approved and authorised as they are by Her Majesty in Council, and that the necessary provisions should be added before the Bill is passed into law, or that a separate Bill may be introduced and carried through simultaneously with the present measure. Not only will there exist after the passing of this measure no necessity for the dual services of the patwaris, but I will not conceal from Your Honour that a great measure of the support which the present proposal has received has been based upon the confident belief that the pledges given by Government upon this point will be

fully and unhesitatingly redeemed. The omission from the Bill of all mention of the future status of the patwari has been productive of much disappointment and dissatisfaction: and I venture to express the earnest hope that the Government will carry out the promise to which they have committed themselves, by the adoption of one of the two courses I have indicated.

"There is one more point with which I wish to deal before I leave Part I of the Bill, and that is with reference to section 16. The penal provisions of this section have been most unfavourably commented upon by the Associations who have been consulted. It is pointed out, and, as it seems to me, with irresistible force, that section 15 provides an ample penalty for persons who fail to register. They are debarred from asserting certain rights in Court. If a person fails within the specified time to sue for or to recover the rent of any land which is the subject of mutation (and he can only succeed on production of a certified copy of the entry in the Record of Rights and of the entry in the Registers of Mutations) his right to institute the suit abates. As the Chamber of Commerce remark, 'the section is of a distinctly minatory character.' Sufficient precautions are taken under its provisions to secure the proper observance of the Act; and, that being so, I confess to finding some difficulty in understanding why the second penalty of a severe fine should be provided in section 16. The method by which the fine is to be realised is, in my humble opinion, also open to very serious objection. A system of daily fines, even though the amount may seem insignificant, will spell ruin and starvation to the Bihar raiyat, while it must not be forgotten that the fine proposed is an arbitrary one of Rs. 50, and no regard whatever is paid to the value of the tenure. Under the circumstances, the penalty appears to me to be not only uncalled for (for the loss of the right to recover in a Court is surely in itself a sufficient punishment), but altogether out of all proportion to the offence. The remarks of MR. FORBES upon the point are so pertinent and so forcible that I will quote them here:—'I am much opposed,' he says, 'to any system of daily fines in the case of tenants. Any one who has had any experience of the working of the provision in the case of proprietors in cess revaluation, partition and other proceedings, will understand the inadvisability of extending the system further. As regards landlords, the punitive provisions of section 65 of the Land Registration Act of 1876 are sufficient. As regards tenants, I would prescribe fines on a sliding scale based on the area or annual value

of the holding. There might be an initial fine, followed up by a further fine (or fines) for neglect to supply the omission within a reasonable period (or successive periods) to be allowed for the purpose.' I will only myself add to this eminently reasonable suggestion the observation that the British Indian Association, the Bengal Chamber of Commerce, and the Bihar Landholders' Association have independently arrived at the same conclusion as MR. FORBES; and I would respectfully suggest to the Council the advisability of adopting a recommendation which finds favour in such influential and authoritative quarters.

"There is one other amendment in connection with section 16 that I desire to press upon the attention of the Council, although I trust it may be found possible to omit the section altogether, for the reasons to which I have already referred. But if this should be found impossible, the section should be redrafted, not only in accordance with MR. FORBES' excellent suggestion, but also as nearly as possible upon the lines of the corresponding section 65 in the Land Registration Act. That Act, as the Indian Property Association point out, also renders persons who omit to apply for registration liable to fines, but unlike the present Bill, it safeguards such persons by imposing upon the Collector the burden of showing that such omission was voluntary or negligent. There should be some similar safeguard inserted in section 16, and I would represent to the Council that the words 'voluntarily or negligently' should accordingly be added, as a measure of bare justice to those who will fall under the operation of the Bill.

"I now address myself to the second portion of the Bill, that which relates to the recovery of the cost of the Survey: and I regret to say that I am totally unable to accord my support to the method proposed. The principle under which Cesses are levied is, in my humble opinion, a distinct violation of the conditions of the Permanent Settlement. I take my stand upon the provisions of Regulation VIII of 1793, which prohibits in the clearest and most express terms the levying by any actual proprietor of land of any new *abwab* or *mahtut* upon the raiyats under any pretence whatever. A cess such as the Survey-Settlement Cess, which is contemplated by the present Bill, is, I venture to assert, nothing more or less than a legalised form of an *abwab*. What does it matter to the raiyat that his money is appropriated to the use of the Government instead of finding its way into the landlord's treasury? The fact that it

is levied by Government and not by the Zamindar does not in any way absolve it from the charge of constituting a direct breach of the covenant of 1793. I am rejoiced to find that I am supported in this view by an array of names which include some of the most distinguished administrators and legal luminaries of this country during the present century. In the year 1877, when the Public Works Cess Bill was before this Council, SIR ERSKINE PERRY, then a Member of the Council of India, wrote:—'I object to the Despatch of the Secretary of State (in which sanction was given to the introduction of the Bill), because, even in its modified form, it seems to decide, and I believe does decide, that there is nothing in the language or promises of Government in 1793 to preclude the present Government from levying local taxes in Bengal for local objects. I have come reluctantly to this conclusion after many struggles and attempts to draw fine distinctions in support of a different view, that the language and act of LORD CORNWALLIS and of the members of Government of his day were so distinct, solemn and unambiguous that it would be a direct violation of British faith to impose special taxes in the manner proposed.' These are trenchant and weighty words, and they are endorsed by men such as SIR FREDERICK HALLIDAY, MR. HENRY THOBY PRINSEP, MR. R. D. MANGLES, SIR FREDERICK CURRIE and SIR H. C. MONTGOMERY. The last named writes:—'A Government should not, in my opinion, voluntarily place itself in a position which lays it open to the charge of breach of faith. It should rather avoid any measure which would be so held in the estimation of its subjects specially interested. Sound policy would seem to point out this as the course to be pursued, that carrying the landholders and their dependants with us must be more efficacious than meeting their opposition at every turn, and fostering in their mind the idea, however well or ill-founded, that their rulers are breaking faith with them under the specious plea of doing what they assert to be for their ultimate good.'

"How unavailing and unheeded were their dignified and statesmanlike protests may be gauged by the mere recitals of the various burdens which are to-day pressing the landed interest. Irrespective of the land-tax, the holders of land have to pay most of the local taxes raised in Bengal—the Zamindari Dâk Cess, the Embankment Cess, the Municipal Taxes, the Chaukidari Tax, the Rural Police Cess, the Road Cess, the Public Works Cess and the Irrigation Cess. I do not speak of the Survey Settlement which it is now proposed to

add to this crushing list, nor of the bulk of the indirect taxes which are also contributed by the class most interested in land. I venture to put it forward with all respect that, even if we cast aside every other consideration, it is not consonant with the principles of equity and justice to thus burden a single class with the task of supplying the funds required for general administration and improvement. I will for a moment accept the answer to my contention which will probably be made, and allow that the present cess is not confined to the zamindars alone, but is levied also from the raiyats, who will equally share in the benefits to be conferred by the survey. The case on the side of the raiyats against the imposition of the cess is no less strong. It cannot, I apprehend, be admitted that it would be legal for a landlord to collect from his tenantry the expenses of a survey that he himself takes in hand, even if it is undertaken for the benefit of the tenantry. And the Government can claim to stand on no better footing. The smallest concession that the Government can make in this respect is to invite the opinions of the raiyats before authorizing the Cadastral Survey of a village or an estate. They cannot, in common fairness, be made liable for the cost of the survey unless and until the majority, or at all events a large proportion of them, consent to its being undertaken. But if the raiyats are silent, and the zamindar hostile, the inference becomes irresistible that the survey is solely required, if required at all, for administrative purposes, and as such its cost should be entirely borne by the Government. I would go even further. In my opinion no survey should be undertaken in a village except at the request of the zamindar or the raiyats, unless the presence of exceptional or prolonged agrarian disturbance calls for the interference of the Settlement Officer.

"But objectionable as is the levying of the proposed cess upon general grounds, I venture to say that the method in which it is to be levied is still more objectionable. And, first, I would point out that to all intents and purposes the cess which is to be levied is a permanent one. There is nothing in the Bill to indicate its temporary character, although it is distinctly stated in paragraph 3 of the Statement of Objects and Reasons that the object of this portion of the Bill is to facilitate the recovery of the cost of a Survey Settlement by a temporary cess. On the contrary, section 18 leaves the cess as a permanent cess. There is thus a conflict between the Bill and the Statement of Objects and Reasons, and it is a conflict which should be terminated by the

explicit declaration in section 18 that the cess which it imposes is to be a temporary one. Then, as to the proportion of the cost which is to be borne by the various parties interested, it was distinctly laid down by the Secretary of State in his Despatch of the 5th July, 1894, that the cost should be borne in certain ascertained and well-defined shares. He said:—'I agree in LORD CROSS' view that, in the circumstances of the North Bihar Survey, the State should bear a smaller share of the cost than it did in the Benares district. But I do not think the State share ought to be less than one quarter of the total cost of making the Survey and Record of Rights. The large rentals and profits enjoyed by the zamindars do not make the raiyats of North Bihar more able to sustain their share of the cost; and the additional one-eighth (two annas) devolving on the State under my present instructions should be given in reduction of the raiyats' share of the expenditure. The cost of the survey will then fall one-quarter on the State, five-sixteenths on the raiyats, and seven-sixteenths on the zamindars.' I submit these instructions are quite clear, and I confess I can discern no adequate reason why the proportions, as definitely fixed in Bihar by the Secretary of State, are not embodied in the Bill. As matters now stand, it is provided in section 19 that the distribution of the cess shall be made under certain rules to be framed by the Board of Revenue, but the proportion is not stated. The reason for its omission is by no means obvious, and I would recommend that the proportions, as sanctioned by the Secretary of State, should be repeated in the section. It should be definitely stated, as the Bengal Chamber of Commerce suggest, that, following the precedent set in Bihar under the orders of the Secretary of State, the amount to be paid by the Government on the levying of each temporary cess shall be four annas, that to be paid by the landlord seven annas, and that by the tenure-holder five annas. The amounts could be the maximum amounts, and the same procedure should be adopted as in the case of the other cesses, notably the Road Cess, levied upon the inhabitants of these provinces. And in this connection the Indian Property Association make the very reasonable suggestion, which I desire to endorse, that the number of annual instalments in which holders of estates shall be entitled to pay the amount leviable from them should be expressly specific in the Act, and that such number should not be less than five. It is in my opinion absolutely essential that these four points, to which I have referred, should find a place in the Bill before it is passed into law. As I have said, I find it difficult to comprehend why the explicit instructions of the Secretary of State are not

carried into effect, or why this cess, which is declared to stand on the same footing as other cesses, should be subject to none of those very necessary restrictions and limitations under which all other cesses are levied.

"I now come to section 21 of the Bill. My own views upon this portion of the Bill are already known to hon'ble members, and I do not desire to weary them with any repetition. But the remarks of MR. FORBES upon the point are so weighty and so suggestive, that I take the liberty of placing them before the Council *in extenso*. The argument, as I regard it, is unassailable, and I trust this Council will be found at a later stage to share my opinion that section 21 should find no place in the Bill. MR. FORBES says:—

'I find it impossible to give my support to the proposal to throw the duty of collecting the arrears of the cess from defaulting tenure-holders and raiyats upon the landlords, and I trust that the Government, after further consideration, will abandon this part of the scheme. In the case of the Road and Public Works Cess there was this to be said in favour of such a system, viz., that those cesses formed an annually recurring demand for all time which could practically be incorporated by the landlord in his annual rent demand. It was foreseen that landlords and tenants would have time, in the course of recurring years, to fall in with the system, and this has been the case. The landlord's establishment has become accustomed to collect the aggregate demands, and the tenants to pay it, and the rent-stream, after the agitation caused by the first influx of its new tributary, flows smoothly along its former channel. But in the present instance the case is very different The demand is an exceptional one, lasting for only a short period, and I have no doubt but that both parties, landlords and tenants, will mutually suffer by being forced into the position of tax-collectors and assessees. On the part of the landlords, I would submit that the recovery from them, *as an arrear of land revenue, of debts* due to Government by the raiyats, but for the collection of which the landlords are obliged to have recourse to the Civil Courts, cannot be regarded as fair or reasonable. Even for the recovery of the amount of Road and Public Works Cess which a landlord has paid in excess of his share from the co-sharer for whom he has paid it, he is allowed to have recourse to the certificate procedure, and thus practically to make the Collector recover his debt for him. In that case the person sued is usually a well-to-do person, from whom the amount of the decree and the costs of litigation can generally be recovered. But this is not so likely to be the case when the defaulters sued are the cultivators. I cannot think it right that while Government makes use for itself of the summary proceeding allowed by law against the middleman, it should not permit him to do so too. It is true that the landlord is allowed to recover from the raiyat 20 per cent. over and above the actual debt; but even if this covers his money losses, it will certainly not make up for the trouble to which the attendant litigation will put him, and for the strained relations that will necessarily result

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between himself and his defaulting tenants. From the point of view of the raiyats the proposal has still less to recommend it. Where the landlord is unscrupulous, he will probably try to seize the opportunity of making a permanent addition to his demand; and even a good landlord, though he might be inclined to be lenient with his tenants in the matter of rent, will certainly not be so where the arrear is a debt to Government which the raiyat ought to have paid himself. It would certainly be a matter of much regret if an epidemic of litigation between landlords and tenants be the result of a Survey and Record of Rights. It seems possible that Government, in proposing this measure, has over-estimated the trouble to which it will be put in collecting the arrears. I see no reason why, with proper arrangements and foresight, the difficulty should be excessive. If the cost of the survey can be determined with sufficient accuracy for each tenant's accounts to be ready in time, and it be made an order on the Settlement Officers not to give out the *khatians* without payment of the amounts due, and if each Settlement Officer be allowed the services of one or more tahsildars to assist him in making the collections, I see no reason why the bulk of the dues should not be realized at once without recourse to law proceedings. For the recovery of the amounts outstanding we must look for lists of the defaulters, their debts and addresses, to the Settlement Officer. The subsequent certificate proceedings will, as a rule, be of a very simple character, for we shall have in the *khatians* a reliable description of the defaulters' immoveable property, and there should be no difficulty in summarily realizing the amounts due by attachment of their holdings. It must be remembered that the dues will individually be very small, only a few annas per acre, and I have no doubt that the raiyats will pay up at once when they see that we mean business. If at the same time the Settlement and Assistant Settlement Officer's hands are strengthened by their being given the powers of a Collector under the Certificate Act, the collections should proceed very rapidly. An instance of the success of a similar scheme is supplied by the case of the Sone Canals. There a collecting establishment, under a Deputy and two Junior Deputy Collectors exercising powers under the Certificate Act, realized over 9½ lakhs on account of water-rates in 1892-93, and about 8¾ lakhs in 1893-94, from some 342,000 assessees. The efficiency with which the work of collection was performed can be judged by the fact that at the end of 1892-93 the outstanding balance on account of the preceding year (1891-92) amounted to only Rs. 7,353 while the outstanding balance for 1892-93 at the end of 1893-94 was only Rs. 3,960 against a demand for each year of something like 10 lakhs of rupees. Where a collecting officer can present himself with a bill in one hand and a warrant in the other, it will only be in cases of downright insolvency where he will fail to realize. We should not either forget that even if we oblige the zamindars to make our collections for us, we shall still have to supply them with all the necessary information to enable them to sue the defaulters, so that we shall, after all, be able to shift only part of the work on to them. But that part, there can be little doubt, will, in their hands, cause a much greater sum total of vexatious harassment than if we undertake it ourselves.'

[*Maharaja of Darbhanga.*]

"With reference to these remarks, I observe that MR. FORBES has urged that the Government should permit the zamindar to avail himself of the certificate procedure for the recovery of arrears of cess. I was unfortunately unable to be present at the last meeting of this Council, but I understand that Your Honour announced at that meeting that it was proposed to adopt the suggestion of MR. FORBES and to authorize the zamindar to collect these arrears by means of the certificate procedure. I desire to express my obligation to Your Honour for the concession. The injustice is patent of compelling the zamindars to collect the dues of the raiyats, and making their property liable to summary sale in case of default, without at the same time giving them summary powers for the realization of the arrears of the raiyats. But candour compels me to add that the concession deprives the proposed scheme of even that small measure of justification which it formerly possessed. Why should the Government hand on to the zamindar the task of proceeding under the certificate procedure? Is there any reason why the Government should not itself make use of the certificate procedure for the recovery of these arrears of cess, which are after all its own debts? It is surely most unjust upon the zamindar that the whole of the odium of employing his summary procedure should be transferred to his shoulders. The unwillingness of the Government to discharge its duties can only be ascribed to a knowledge of the unpopularity which the proposed cess will awaken and the consequent difficulty in realization. The Central National Muhammadan Association have described the situation very tersely and clearly. 'It is certain,' writes Nawab Syed Amir Hossein, 'that well-to-do tenants will pay direct to the Government and thus save themselves 20 per cent. The zamindars will then be left saddled with liability for those tenants who are in embarrassed circumstances and unable to pay the Government. The offer of 20 per cent. to the zamindars under such circumstances seems to be rather illusory.' I venture to submit it is not too strong a criticism to offer, to say that the Government are attempting to realise, through the zamindars, debts which they cannot realise from the tenants. Wherein is the justification for such a policy? In my humble opinion, it is the bounden duty of the Government to itself undertake the collection of the cess from the raiyats. How can the zamindar hope to succeed when the Government, with all its resources, is apprehensive of failure? The present proposal to punish the zamindar for the sins of his raiyats was not in any way contemplated by the

Secretary of State, and I will add that I find it difficult to believe it would have met with his approval. The principle by which it is sought to make one man responsible for the default of another is an essentially vicious one. It must not be forgotten, as the British Indian Association very justly remark, that 'in the case of the Zamindari Dâk Cess and the Road Cess, a provision was made in the law for the recovery of the cesses from raiyats through the landholders, simply because in both cases a large and influential body of landholders, as represented by the British Indian Association, agreed to realise the cesses from the raiyats and pay them to Government.' In the present case, however, they have agreed to do nothing of the kind. Experience has shown them that, even where a liberal allowance is made for cost of collection, the loss they have to suffer by non-realization on various grounds is very considerable. The Bengal Chamber of Commerce support the suggestion that if the section is retained (although it is not easy to see in what way it is possible to defend it), interest at a certain fixed rate per annum should be allowed on the arrears of cess in addition to the 20 per cent. already provided, the object being, if possible, to make the tenant perceive that it is to his interest to pay the landlord the amount of the cess, and to avoid trouble to himself and to his landlord. The Central National Muhammadan Association urge that, if the section is to be retained, all tenants should be bound to pay to the zamindar, so that the zamindars may be safeguarded against serious loss through default on the part of their tenants. This is the principle upon which the Road Cess is levied; and if we admit the justice of levying the present cess, the suggestion has everything to recommend it. But I find myself unable to make this admission. The zamindars do not demand this survey. It has been sanctioned in the teeth of their opposition. They are now not only called upon to pay their share of the costs of a measure which they regard as both unnecessary and unjust, but also to recoup the Government for the unrealisable shares of the raiyats. They are unable to perceive the equity or justice of such a proposal. The Government revenue on their property was fixed at 90 per cent. of their revenues at the time of the Permanent Settlement. This was clearly pointed out by SIR FREDERICK CURRIE in 1877, in his Minute of Dissent to the Public Works Cess Bill. It cannot surely be urged that the Government of 1793 erred on the side of leniency in their assessment. In this respect the Bengal Land Settlement is very different to the settlements in the other provinces, where the talukdars

and zamindars receive a much higher percentage. It is notorious that many of the original landholders were reduced to beggary within the first twenty-five years of the settlement, by their inability to comply with the Government demands. Those estates whose good fortune enabled them to survive are now, it is true, in a better position than they were in 1793. But does that constitute a valid reason for mulcting them of the increase which they owe to their management and to the careful husbanding of their resources?

"I desire, in conclusion, to draw attention to the special hardships which the collection of the Survey Cess will occasion in districts such as Purnea, where the annual rent of a raiyat is often less than the average estimated cost per acre of the survey. A rule should be laid down that the cost of the survey should in no case exceed ten per cent. of the annual rent per acre of the raiyat's holding. I submit it is essential that the Government, which is conferring the unmixed benefit of a survey upon landlords and tenants, should at the same time acquaint those classes with the exact price they are to pay for the benefit that is being conferred upon them. It may not improbably be discovered hereafter that the cost is far beyond the means of the raiyats for whose protection the survey is being undertaken, but it will then be too late to remedy the evil.

"I do not desire, Sir, to detain the Council any further. I have already placed before hon'ble members the criticisms I had to offer with regard to the sections in Part III of the Bill. The main portion of the Bill to which I am compelled to take serious exception is the second Part."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"I must, in the first place, offer my best thanks to His Honour the President for having, a fortnight ago, acceded to my request to adjourn the debate for two weeks to enable me and the other members to consider the many important questions connected with the principle and details involved in this Bill in the light of the various opinions submitted to the Council by local officers, public bodies and the public press. I have made the best use of the time consistently with my other avocations, and I have tried to inform myself on the subject in the best way possible, and the result is that I have been able to form some conclusions on the merits of the Bill, which I shall place before the Council in as brief a space as possible. But I must say, with reference to most of the observations which I shall submit to the Council, that those observations have no pretensions

to anything like matured conclusions, even on my own behalf, and that they are not to be taken as final and conclusive views on a subject of such grave importance: on the other hand they represent the first impressions produced in my mind, and must be taken to be subject to any modification that might be suggested during the course of the debate, and which might appear to me to be more reasonable: and at all events they are subject to the views which might be expressed from the Chair and to the very lucid summing up which every question receives from the speech of the President at the close of the debate. I may further state that the observations which I am about to make are not dictated by any spirit of hostility towards the Bill; on the other hand, they are animated by a spirit of friendly criticism for the time, having for their object the desire to shape the Bill in such a way that the same should be least open to unfriendly criticism and be most calculated to work well in practice.

"In regard to the question whether the Bill should be introduced at all in the Council, I submit it is wholly unnecessary for me to express an opinion. Whether the Bill is expedient or not, and whether the principle which underlies the Bill should have a trial given to it or not, are questions on which everybody is aware that there exists a diversity of opinion. Whatever my own individual opinion might be, it is unnecessary for me to state in detail, but it is quite certain that the opinions of the friends and supporters of the measure, and those of the hostile party, are so pronounced and decisive in favour of their respective views, that nothing short of an actual trial will be held to be conclusive on the question. The enemies of the Bill, by way of hindrance to the Bill, say point blank it is doomed to be a failure. But whatever misgiving might arise in my mind, my doubts are not sufficiently strong to enable me to say positively that the Bill should not have a trial. For a long series of years the stream of thought has been running in one channel, and a large body of intelligent and responsible gentlemen, who, by their superior intelligence and mature experience, are entitled to be heard with the respect due to their position, have been unfaltering in their conviction that some such scheme as the Bill under consideration presents is necessary for safe government, and that the measure is likely to be beneficial to the raiyats, if not beneficial in the same degree to the Zamindar and to the Government likewise. SIR STUART BAYLEY in 1885, dealing with Chapter X of the

[*Maulvi Muhammad Yusuf.*]

Bengal Tenancy Act, expressed himself in Council as follows (see Reports of the Proceedings of the Legislative Council of India for 1885, page 67):—

'I have dealt with this Chapter at some length, because I think it is one of the most important in the Bill. The zamindars naturally object to it, because its operation tends, by the process of registering the rights of the raiyat, to lessen their own power of dealing with him at their pleasure, while the Bengal Government seems to look upon it as the one oasis which stands out, in the sterile wilderness of the Bill, rich with potentialities of rest and refreshment to the weary raiyat.

'I am not sure myself that the raiyats will welcome the light of day in regard to their holdings more than the zamindars will welcome it in regard to their rents, but I am sure that the operation of this Chapter, if wisely and discreetly carried out, will ultimately tend to give greater stability to all rights in the land, to reduce litigation hereafter, to give the Government the benefit of that real knowledge of facts in regard to the relation of landlord and tenant which they now have to pick up piecemeal through the records of the courts and the registration offices, and deficiency of which they so much lament, and that it will prove, as we are informed the similar record has proved in the permanently-settled districts of the North-Western Provinces, *the saving of the raiyat.*

"It is unnecessary to multiply instances of opinion more or less pronounced in favour of the Bill. By the working of the Bill when passed into law such opinion will either be displaced or receive corroboration. But I may say that I shall scarcely be true to myself or true to the Council or true to the traditions of the profession to which I belong, were I to say that this Bill will only result in unmixed evil and unmitigated mischief. I cannot shut my eyes to the fact that even at the present moment litigation comes up to the High Court regarding the ownership of *jotes* and holdings in which some very crude and imperfect materials relating to the survey of 1842 are appealed to by parties in support of their claims of identity or in refutation of such claims advanced by the adversary; but the survey *chittas* of 1842, having been made from a totally different point of view, and their purpose and object being wholly different, they involve the Court in no little embarassment, and the conclusions based on them are as often wrong as they may be right, the result being wholly unsatisfactory.

"Therefore, having regard to the past history of the measure, and judging by the light of the very strong opinions expressed in its favour, I say, in 1895 let the measure have a fair trial; in fact I feel there is no escape from it. But I also say that to a very large extent the success of this measure will depend

in the first place on a proper wording of the Bill, and, in the second place, on the spirit in which its practical working is to be carried out and the cordiality which it receives from the hands of the parties concerned. The Government will have to watch its workings, and although there could be no objection to such deficiencies being supplied from time to time as might be laid open and brought to the surface by practical experiment, still future interference should not be accompanied with undue haste, so as to throw out of groove everything connected with the machinery of the measure and mar its usefulness. I make this observation because outside the Council an impression prevails that as soon as an Act of the Legislature has commenced to be appreciated and has begun to work satisfactorily, the Legislature steps in to unhinge the whole of the measure. To illustrate this, I will, with due deference, give some instances in which the very Bill which is before the Council, as I presume to think, unnecessarily interferes with some of the matters which relate to the Land Registration Act which has just commenced to be understood by the people, and the result to my mind is a clear conflict between this Bill and the Land Registration Act, so that if the conflicting provisions are allowed to stand, people will be perplexed and hampered in their action relating to the Land Registration Act. Take, for instance, section 4 of this Bill. That section is in terms permissive, but read along with section 15, it becomes compulsory, because penalty attaches to omission of action or default. The time fixed by section 4 is four months; the time fixed by section 42 of the Land Registration Act is six months. Within the extra two months there is a penalty under the Bill, while no penalty is incurred under the Land Registration Act. Then again the conflict between the two Acts cannot possibly be avoided, even if the time under the Bill be extended to six months, provided the penal consequences under section 15 be allowed to remain in tact, and provided also that section 4 be allowed to remain optional as it is; because, suppose there is an omission to apply under section 4 of the Bill but no omission to apply under the Land Registration Act, the consequence then would be that a penalty would be incurred under the Bill; while no penalty would be incurred under the Land Registration Act. The zamindar would therefore be disentitled from suing under the Bill, but he would be entitled to sue under the Act. Then again, suppose you make section 4 of the Bill also compulsory, the result would be this that there is no saving clause under the Bill, although under sections 67 and 77 of the Land Registration Act, the party

can apply at any time. Furthermore, the Collector is bound to carry out the orders of a competent authority, and therefore if the proprietor has omitted to apply within six months he can still proceed under section 67, or he can go to the Civil Court upon a cause of action, such that a Civil Court is bound to take cognizance, and get an order for registration; but there is no provision in this Bill of such elasticity, and there could be none, regard being had to its scope and object. There will thus be a disability under the Bill, but none under the Land Registration Act. Again, the consequence of an omission under the Bill is to make the defaulter liable to a fine, whatever be the reason of the omission; but under the Land Registration Act there is no fine, except when the omission is voluntary and intentional, or due to culpable negligence. And if you make the provisions of the Bill to all intents and purposes the same as those of the Land Registration Act, still in many cases conflict would be unavoidable, because matters of discretion are such that two persons or two Courts may take different views of one and the same question. I refer to this matter of conflict at this place by way of parenthesis. I will deal with it more in detail further on.

"There are two preliminary matters to which I wish to refer cursorily before coming to the main provisions of the Bill: the first is that which has already been referred to by the Hon'ble the MAHARAJA OF DARBHANGA: it relates to the Patwari Regulation. The way in which the point occurs to me is this: there is no section in the Bill providing for the repeal of any Act or Regulation. As I do not wish to prolong the discussion, I do not desire to repeat the arguments which have been placed before the Council by His Highness in favour of the view that the Patwari Regulation should be repealed. It is obviously expedient that the Regulation should be repealed. I submit, some measure should be provided in this Bill or some step should be taken alongside of, and simultaneously with, this Bill, or at any other time most convenient to the Government, to do away with the dual control of the patwari.

"The other preliminary point to which I desire to refer relates to the procedure in regard to the realisation of rents. At the time of the passing of the Bengal Tenancy Act in 1885, to say nothing of the time before and after that, it was a matter which received the careful consideration of the Government and its officers how to devise a procedure which would offer facilities for

the realisation of rents by the zamindars; but in 1885 no precise and definite result could be arrived at, because no procedure could be thought of, which was feasible and at the sametime free from defect and not open to objection of a more or less serious nature. The reasons which weighed in 1885 against a satisfactory procedure being devised has now ceased to exist, and what was not feasible in 1885 in regard to the grant of a more easy procedure to the zamindars for the collection of their rents is now feasible and practicable; and if the conviction is certain in regard to the successful operation of this Bill, then I say the time has arrived that the zamindars should, within such limits as might be considered necessary to be laid down, be armed with the certificate procedure for the purpose of realising their just dues. The details of the tenancy being ascertained, the demand would be known, and the party entitled to receive and the party bound to pay would be known, and therefore no reasonable objection can exist to the enlargement of the certificate in favour of zamindars generally, or with necessary qualifications, within limits in which this Bill will have operation.

"With these observations I shall just glance over the provisions of the Bill and state to the Council on what point or points those provisions appear to me to be defective and open to criticism.

"I think I am right in supposing that this Bill is the outcome of Chapter X of the Bengal Tenancy Act, and that it presupposes operations contemplated in that Chapter to have been carried out; that is to say, it presupposes that a record of rights has been prepared. With that record this Bill has nothing whatever to do. A record of rights having been effected under Chapter X, and the points required by section 101 of the Tenancy Act having been laid down and ascertained, this Bill comes into play. The object of this Bill is to maintain that which has been attained by the operation of Chapter X. In other words, the legitimate object of this Bill is the *khatian* and not the *khewat*. A consideration of the *khewat* therefore seems to me to be foreign to the scope and object of this Bill.

"One or two minor suggestions have crossed my mind here. In some of the papers before the Council it has been pointed out that section 1 should be improved. As it stands, the result might be this that if, in reference to, say, twenty bighas of land in a certain district, this Bill comes into operation, then the whole of the district might be liable to the cess—a result which, I think, is

not contemplated by the hon'ble mover of the Bill. I do not think it was ever the intention to make the whole of a district liable owing to operations which have taken place only in a certain defined area in that district. I am therefore of opinion that the language of the first section should be modified in order that the real intention regarding the operation of this Bill should be clearly expressed. In reference to section 2 of the Bill, the words 'record of rights' have been defined with reference to the *khewat* and the *khatian*, but these words themselves require definition. These, however, are minor points. I have examined the provisions of the Bill, both as they stand in the Bill, and also as they bear on existing Acts, and the result of my examination has been that certain sections of this Bill most certainly conflict with certain sections of the Land Registration and of the Bengal Tenancy Acts. I shall explain myself fully on this point so as to afford an opportunity for an explanation in reply that the conflict imagined is not real."

The Hon'ble THE PRESIDENT said:—"I would suggest that it is unnecessary to enter into such questions of detail: if there is any such conflict, the Select Committee will set it right."

The Hon'ble MAULVI MUHAMMAD YUSUF KHAN BAHADUR continued:—"Then I shall omit the observations I was about to make with reference to those sections of this Bill which seem to me to conflict with certain sections of other Acts. I was going to observe, with reference to section 3 and section 11 of the Bill, that, regard being had to the scope and object of the Bill, it appears to me that it is not necessary that the *khewat* portion of the record of rights should be reflected in the mutation registers, or if it be necessary for the sake of symmetry that the *khewat* should also find a place in the mutation registers, I submit that there are words at the end of section 4 which would be amply sufficient to convey every information to the Sub-Registrar to enable him to make the corresponding changes in the register. The words to which I refer are:—'The Collector shall inform the Sub-Registrar of every mutation ordered by him under sections 52 and 55 of the Land Registration Act, and on the receipt of such information, the Sub-Registrar shall record the same in the Register of Mutations.'

"It should not be a part of this scheme that proprietors should be bound or should have to apply to the Registrar of Mutations in respect of their

proprietary interests, but if it be deemed necessary that proprietary interests should also find a place in the Register of Mutations, then the Collector should transmit the necessary information to the Registrar. I therefore submit that this Bill should confine itself to the subject-matter of section 7. The initiation of points relating to the *khatian* as well as completion thereof should be assigned to the Sub-Registrar. The initiation of matters regarding proprietary interests should be left to the Land Registration Act in the same manner as the completion of final entry regarding those interests is left by this Bill to that Act.

"Section 5 appears to be unnecessary and out of place. The same remark applies to section 6. The information required by section 6 should not be exacted from the proprietors under the working of this Bill. Under the Road-Cess Act, provision is already made for zamindars to file a return; and under clause (*d*), section 30, of the Land Registration Act, the Collector of the district is empowered in order to maintain his record corrected up to date, to compel proprietors to file any statement which they are bound to file. Holders of estates and tenures cannot be expected to take notice of every change in every village, and cannot therefore in their statement show any change which they have not themselves recognised: so far as the information required to be submitted relates to the *khatian* or the tenants' rights, such information will be contained in the working of section 7 from the tenant's point of view. By forcing the zamindar's hand in the matter no additional advantage can be gained, and the only result of section 6 will be to launch people into litigation which they would not have undertaken but for this legislation. The burden thus thrown would be wholly unnecessary, inasmuch as the proposed statements will not be published under section 105 of the Bengal Tenancy Act, and the entries will not be of any evidential value either in favour of the landlord or against the raiyats. Besides, the words of the section are wide enough to include mutations of rent, although such mutations of rent do not come within the purview of section 7.

"As regards section 7, the first thing that strikes me is, that non-occupancy raiyats are not obliged to register. That is so far so good, and I do not refer to raiyats of that class with a view to make the registration of their holdings compulsory, but I refer to them for another purpose, viz., that of showing that after the best consideration the Government has been able to bestow upon the question of maintenance of record of rights, that record must remain to a certain

extent incomplete, viz., so far as the non-occupancy raiyats are concerned. I submit that the balance of convenience also requires that there should be some modification in the registration of transfers by occupancy tenants even at the risk of making the record further incomplete. As the law at present stands, occupancy raiyats have no right to transfer their holdings without the consent of their landlords, except where there is a custom to effect such transfer irrespective of such consent. That view of the law is unaltered by the present Bill. If therefore transfers by occupancy raiyats are registered without reference to the landlords, then to say nothing that the fact of registration itself will give an impetus to unauthorised transfers, the effect of such registration will be to set class against class, and to revolutionise the law relating to the transfers of tenures and make them transferable, custom or no custom. Therefore, in order to make the section consistent with the present law, after the words 'occupancy raiyats' in clause 1, there should be added 'where such transfer exists by custom.' Or the section might provide that on the occasion of a transfer, &c., the tenant shall 'first get his name registered in the zamindar's office and shall then get his consent in writing and give notices, &c., &c.' This will keep up and promote harmony between the parties without introducing anomalies. I therefore think that in the first place the registration of transfers by occupancy raiyats need not be made compulsory. The Tenancy Act contains provisions for registration of tenures which are transferable; but the mutation of occupancy holdings was not at any time considered necessary (*vide* paragraph 26 of the *Calcutta Gazette*, page 275, Part 6, dated the 21st March, 1883). The proposal of the Rent Commission 'to extend the registration system to occupancy holdings has not been adopted, as it is feared that there would be greater difficulty in bringing home to persons of the raiyat class the details of such a system.' But if the registration of transfers by occupancy raiyats is to be made compulsory, then the section must be considerably modified before it can be safely enacted into law. There are other matters of detail in connection with this which I omit, such, for instance, as the notice being treated as a document; the procedure relating to applications for registration in regard to succession; the absence of a provision empowering registration after time, and so forth.

"As regards section 9, on the question of the presumptive force of recorded mutations, I submit there is an apprehension that this section will militate

against the right of the landlord to refuse to recognise subdivisions of a tenancy. Care should therefore be taken that the law, as it stands at present, should not be interfered with. There should be a proviso that, if an objection is raised by the landlord or by persons interested in the question, then the presumption shall not arise: under section 109 of the Bengal Tenancy Act, it is only undisputed entries that are presumed to be good.

"As regards sections 15 and 16, they go along with section 4; and as I have, under a suggestion from the Chair, omitted to deal with section 4 in detail, I likewise omit to deal with sections 15 and 16 at any length.

"I now come to Part II, which is a most important part of the Bill. I submit that section 114 of the Bengal Tenancy Act contains sufficient provision for the purpose of enabling the Government to realise its dues. The actual expense is recoverable under that section in certain proportions from the zamindars and tenants, but under section 18 of the proposed Act the actual expense is declared to be a cess, with the result that the whole might be recovered from the zamindar alone. If it is considered expedient to modify section 114 of the Bengal Tenancy Act, that modification should not be upon the lines laid down in section 21 of the Bill. If it is difficult for the Government, armed as it is with summary powers, to realise their dues from the raiyats, it is still more so to the zamindar, who has no such power; besides a zamindar who has let out his estate in *mukarrari* cannot conveniently collect the cess from the numerous tenants of the estate. The inconvenience of collecting a few annas by a large number of fractional sharers, who, under the Bengal Tenancy Act, must all sue together, will be immense. Furthermore, section 21 does not provide for the realisation of the costs by each grade of landlord from his tenants. If each grade is to get 20 per cent. extra as collection charges, what will be the condition of the tenant? And it must be conceded that in the case of intermediate tenures, it is incompatible with justice that the highest landlord should collect from the lowest tenant.

"I am of course aware that by section 40 of the Road Cess Act of 1871, every holder of an estate is bound to pay the entire Road Cess to the Collector, and under section 47, the holder of the estate is entitled to recover with interest at 12 per cent.; but the existence of such a provision in the Road Cess Act of 1871 is no reason why the present Bill should contain a like provision. The considerations which were relied upon at the time the Road

Cess Act was enacted for imposing the obligations on the zamindars do not arise in relation to the present Bill. In the debate in Council on the 8th July, 1871, (see page 160), the President said:—

'Property had its duties in all parts of the world as well as its rights, and that was eminently the case in India and most eminently so in Bengal, where landed property had been created for the sake of the duties which the landholders were expected to perform. Under the Indian Agrarian System all sorts of duties were delegated to the zamindars, and one of those duties was, as he believed, the making of roads. As the zamindars had been absolved from that duty in consideration of paying a cess with others, the least they could do in return was to collect the rate, and that duty was not of a burdensome character. We had in no degree mitigated the process by which the zamindars could collect the rate. The process would involve the sale of the lands of their under-tenants and other stringent means of compulsion. We armed them with these powers, and all they had to do was to collect a certain sum in excess of their rents—to add a percentage to their own collections; and in consideration of their collecting the rate they were absolved from their original burden of keeping the roads in repair.'

"The analogy from the Road Cess Act does not therefore apply to the present Bill, which is intended for the benefit of the tenants without the zamindar being, of himself, from any consideration of justice or equity in the abstract, bound to provide such tenants with such benefit. But there is still another objection: all the solvent tenants are, by this section, taken by the Government, and all the insolvent and refractory ones are left to the zamindar. The Government should either collect the whole of its dues from the tenants or not at all; and if the zamindars are to be allowed to collect the cess for the Government, then I submit that interest ought to be allowed to them for payments made to Government by them on behalf of others.

"Then again the maximum amount of costs per acre should be laid down, and in no case should the survey expense exceed 20 per cent. of the gross rental. The maximum proportion of costs payable by Government, by the zamindars, and by the tenants should be fixed by law. The proportions payable by rent-free tenure-holders should also find a place in the Bill.

"With regard to the last few sections of the Bill, there is not much to be said. In section 23 the order of the Commissioner is declared to be final: it is not made clear whether that order is to be final only so far as the Revenue Courts are concerned, or whether it is final even in the sense so as to shut out the dispute from the cognisance of the Civil Court. The latter view cannot

possibly be the intention of the Bill, and should not be allowed to prevail, because the Bill is sure to give rise to a mass of litigation with which nothing but the machinery of the Civil Court would be equal to cope, and this Bill, being the first measure of the kind, notwithstanding the care which the Government is taking in framing this Bill, we are, as it were, about to take a plunge in the dark, and no light which it is possible to have reflected on the subject in future should be excluded. The Bill should therefore go forth with all possible guarantee against injustice in any conceivable case. I therefore think that the jurisdiction of the Civil Courts should not be taken away in order that persons who might be dissatisfied with the decision of the Revenue Courts might have recourse to those Courts for relief.

"In the same section 23, I find that no appeal is allowed to the Board of Revenue from the orders of the Commissioner; but I notice that in section 81 of the Land Registration Act it is provided that the order of the Commissioner is open to revision and modification by the Board. I should think there ought to be an appeal under this Bill, as a matter of right, to the Board of Revenue against the Commissioner's order.

"I now bring my observations to a close, and I trust the Council will pardon me for having trespassed on their time and patience to such a length; my justification for having done so consisting in the novelty and extreme importance of the subject under consideration."

The Hon'ble MR. BUCKLAND in reply said:—"I do not propose to detain the Council at any length. The remarks with which we have been favoured by the Hon'ble THE MAHARAJA OF DARBHANGA, I am afraid, hardly reached us on this side of the room, but I did make out some of the points to which the hon'ble member referred. I am glad to hear from him that the scheme of registration contained in this Bill is the best of the schemes which have been before the public. Coming to the objections raised by the Chamber of Commerce, I may observe that I have already alluded to them in my preliminary remarks; they referred to the appellate sections at the end of the Bill, and I may say that they will receive our full consideration. With reference to the quotation which the hon'ble gentleman read from MR. E. MACNAGHTEN'S report, it will be in the recollection of the Council that it was about the *patwari*. It is perhaps known to some hon'ble members that considerable correspondence has taken place on this very subject, and before long the papers will very

likely be published, and will contain some very interesting information on this subject, but at present they are not available. I think I caught some remarks of the Hon'ble THE MAHARAJA OF DARBHANGA in regard to the Permanent Settlement. I do not propose to follow him in detail on that subject, because we shall never come to an end if we go back to the time of the Permanent Settlement, but I would ask him to refer to the debate in Council in June, 1871, when the Road Cess Bill was before the Council; and if he would refer to the remarks of MAHARAJA SIR JOTENDRO MOHUN TAGORE at the time, it will save me some trouble now. I would also refer him to the remarks of BABU DIGUMBER MITTER, who then said:—

'As regards the main principles involved in the proposed measure, viz., the liability or otherwise of the lands in the permanently-settled estates in Bengal to additional taxation, the question having been already disposed of in the affirmative by the highest executive authority, this Council, he supposed, had no other alternative than to carry out that order in all its integrity. He would therefore refrain from making any observations on that point.'

"And MAHARAJA SIR JOTENDRO MOHUN TAGORE said:—

'The question of imposing a cess on the permanently-settled estates of Bengal had been almost discussed threadbare. Eminent lawyers like SIR ERSKINE PERRY and SIR BARNES PEACOCK had given their decided opinion as to the legal bearing of the question; and statesmen of wide Indian experience had also clearly recorded their views on the subject, as we see from the Education Blue Book lately published. He had nothing new to add, and he would not attempt to hold his *farthing rushlight to the sun*. It had been said that the Government had no intention whatever of breaking the stipulations of the Permanent Settlement, and a distinction had been attempted to be drawn between land revenue and land tax. He confessed that to the natives it seemed to be a distinction without a difference; for so long as the demand was upon the land, and was to be recoverable as arrears of revenue, it mattered not under what name that demand was to be made; and so long as the landholder's found that it took away so much of the profits the enjoyment of which had been solemnly guaranteed to them, they could not but look upon the demand as an infringement of the promise made to them by Lord Cornwallis and ratified in the British Parliament.'

"And more to the same effect. But he went on to say:—

'But we knew that the Secretary of State had already given his decision on the question of the proposed cess, and it was not for him (RAJA JOTENDRO MOHUN TAGORE) to hamper the proceedings of the Local Government by raising factious opposition.'

"I think it is hardly necessary to multiply quotations from the literature of the subject on the question of the Permanent Settlement. There is no intention

whatever of breaking that Settlement. All that we say is that, if it is decided by the Select Committee that this is the best way of collecting these dues on account of the cost of a survey and settlement, there is nothing in the Permanent Settlement to show that that procedure should not be adopted. Whether the procedure which is sketched out in the Bill should be adopted is a question which we practically leave the Select Committee to decide.

"There is no intention whatever, although the words in section 18 do not prevent that conclusion, to make this cess a permanent one. There is a certain bill to be paid, and when that is paid off the cess will naturally lapse. It has all along been considered advisable that this cess should be levied on certain lines, but those lines are not altogether settled, except that it is important to make it as light as possible. There are two ways of looking at this question, and it is for consideration whether we are not going a little too far in entrusting the collection of this cess to the zamindars. Several authorities have offered in their reports the opinion that there is a certain amount of risk attaching to these collections, and it has been thought that they are very liable to be abused, and by some of the smaller zamindars to be converted into a permanent cess, much to the discontent of the raiyats. Not long ago I found a rather strong passage to this effect in one of the native papers, in some comments upon this Bill. It said:—

'The raiyat's part of the cost will be realized from the zamindar, who, in his turn, will realize it from the raiyat. This process will certainly lead to the oppression of the raiyat. There are zamindars in Bengal who levy the Road Cess at the rate of one anna per rupee of rent, but pay to Government only at the rate of a quarter anna. In fact a good many zamindars have increased the rents of their raiyats in the name of the Road Cess. And it is certain that what is taking place in connection with the realization of the Road Cess will also happen in connection with the new cess, if its collection is left in the hands of the zamindars. Government is therefore earnestly requested to make the collections in the present instance directly from the raiyats.'

"I merely mention this to show that there are two sides to the question, and that it is a matter of some difficulty, and it is therefore thought that it will be best to leave it to the Select Committee to decide which is the best course.

"The hon'ble member who spoke last (MAULVI MUHAMMAD YUSUF) went considerably into details, and to a large extent over the same ground as I did in my preliminary observations. When the report of his speech is printed, I shall be able to give his views the attention they deserve.

[*Mr. Buckland; the President.*]

"With these remarks, I hope the Bill will be allowed to go before the Select Committee."

The Hon'ble THE PRESIDENT said:—"I do not think I am called upon to-day to add very much to what has been said by the Hon'ble MR. BUCKLAND in defence or explanation of the provisions of the Bill, as I think that what had been said is sufficient. I listened with great attention, but I am sorry to say with very ill success, to the important speech made by the Hon'ble THE MAHARAJA OF DARBHANGA. What he said hardly reached me, but I shall have an opportunity of studying it very carefully afterwards. The principal point which he dwelt upon was the important point involved in section 21 of the Bill. If I apprehended rightly, what he said was that he met this section with uncompromising opposition. The Hon'ble MR. BUCKLAND has already explained pretty fully the position which the Government take up in proposing this form of collecting the cost of the survey. It was first suggested by SIR ANTONY MACDONNELL, who was greatly impressed by the argument used as to the labour which would be involved in collecting such a great quantity of minute demands from all the raiyats, and the great advantage which would result to them and the country at large if the zamindars would collect the cess on their behalf. I certainly thought when I adopted his views that the suggestion would not meet with any serious opposition. Of course I realized that there are cases in which there would be some annoyance and trouble to the zamindars, but on the whole I thought that the annoyance would be so small, and the advantage to the raiyats so great, and that there is so much solidarity between the interests of the zamindars and the raiyats which stand and fall together, that it would be better for them for their own sakes and for the raiyats' sakes to undertake this charge than to leave it in the alternative manner in which it stood, and is still standing, namely, that these costs should be collected individually by the certificate process from the raiyats.

"Since the discussion on this Bill began, we have had a report from MR. FORBES, Commissioner of Patna, which is written with great ability and knowledge of details, and he has endeavoured to show that the difficulties and the annoyance to cultivators have been overrated, and that it will not be so costly and laborious a process to collect from them, and he instanced the collection of the canal water rate and canal dues in the district of Shahabad, where it may be said that innumerable small rates are collected with a

[*The President.*]

minimum of friction and inconvenience. That of course is an argument which would weigh with the Government and with the Select Committee, but speaking on behalf of the Government, I wish it to be understood that there is no intention on my part to override the feelings and the wishes of the zamindars on this subject. I proposed it as a sort of olive branch: I threw it out as a procedure which I thought zamindars would be glad to adopt, feeling that with the responsibilities attaching to their position, they would obtain a certain amount of indirect but real advantage, and seeing that the interests of the zamindars are identified with those of the raiyats.

"I should myself be extremely unwilling to see this measure passed, if it is passed in the face of the opposition of the zamindars and landholders in Bengal; and if I did not succeed in bringing round the Hon'ble THE MAHARAJA OF DARBHANGA to our view and the other hon'ble members who represent the landed interest in this Council, I shall be quite content to omit the proposal; but I should be very much more content and satisfied if we can bring them round to our views, and I should be glad if they would be prepared, with the modifications and facilities we propose to grant them, to withdraw their opposition and assent to the arrangement; otherwise if the opposition is kept up, my advice to the Select Committee would be to adopt their views and remodel section 21 so as to cut out the provision for collecting through the zamindars and to simplify and carry out the original procedure as laid down in section 114 of the Bengal Tenancy Act, under which we are now recovering, and collecting directly from the raiyats themselves. I believe that on the whole the better arrangement would be—for the good of the whole community, for the diminution of expenditure, diminution of loss of time, and friction and irritation in setting up of class against class,—I believe that it would be better that our proposal be accepted. I do not wish to take up the position of using the official majority of the Council or the general majority of the Council to force the measure on them, unless the zamindars themselves accept it.

"Turning to the remarks of the Hon'ble MAULVI MUHAMMAD YUSUF, I trust that he did not think that I interfered unduly in pointing out to him that this was not a suitable time for entering upon objections on matters of detail which he might see in the draft Bill. One of the principles which underlie the Bill is that we should attempt to fuse the Land Registration Act and the Indian Registration Act together, and make them work together, so that the work of

registering a deed should *ipso facto* be the work of registering the *dakhil kharij*, and that the procedure of the Registration Act should go on and become the registration of mutations. When the Hon'ble MAULVI MUHAMMAD YUSUF said that there were many points in which there was conflict between the two Acts, I said that it was not necessary to elaborate the argument, because I admitted it, and the hon'ble mover of the Bill admitted it. Several small points of detail have been pointed out that would require a little modification here and there, but the object of appointing a Select Committee is that they may fuse the two Acts together in the way we desire.

"I will only say a word or two in regard to the papers which have been laid before the Council. I wish first to express on behalf of the Government our sense of the care and good sense with which the Bill has been criticised, and I wish particularly to return our thanks to the Hon'ble Judges of the High Court for the excellent letter which we have received from them. There is not a single suggestion made by them which I do not accept, and which I do not think should be embodied in the Bill, except so far as they have misunderstood our intention and assumed that we are going to give *quasi*-judicial powers to the Sub-Registrar. That assumption, as I have said, is a mistake: we have no intention to give any *quasi*-judicial powers to these officers, who are to treat those notices of transfer exactly in the same way as any other deeds brought to them. If they are properly admitted before the Registrar they are registered: if they are disputed, the Registrar will refuse to register them, and leave the parties to carry on their quarrels and settle their differences in the Civil Court; they will do nothing as to the registering notices of transfer unless both parties agree; and if it is a case of succession, unless full publicity is given and the village at large has full opportunity of stating whether they accept the fact that a certain person is the successor of a deceased raiyat, and that he ought to have his name registered.

"As the Hon'ble MR. BUCKLAND has stated, there are two sections in particular which we have put in for the sake of facilitating matters for the zamindars, and which are not essential to the principle of the Bill, section 4 and section 8. As I mentioned before, the idea in section 4 is to make it easier for land-owners to effect mutations by enabling them to go to the nearest Registrar only three or four miles off, instead of to the head-quarters at a considerable distance. But at the same time several difficulties have been pointed out, and

unless the Select Committee can make the two Acts work together, it is a point which must be given up, and also if zamindars and raiyats do not desire it, it must go out. A more difficult section is section 8 which I commend to the careful consideration of the Select Committee. We propose that the zamindar should receive intimation that there has been a transfer *inter vivos* from one raiyat to another of part of his holding or the whole holding. Thus if A B asserts that he has sold, and C D states that he has bought, and nobody disputes the fact, then the registration is effected. Then comes in the legal right of the zamindar to object to the transfer, totally apart from the fact that the transfer has taken place. MR. FORBES has in a very forcible letter suggested that we should have nothing to do with this side of the question, on the ground that we would be creating an opportunity for litigation and would be setting class against class. That is not my own view, but it is a view which is tenable, and a view which, if this Committee agree with it, will be fatal to the section. From the zamindar's point of view it seems fair that he should receive information of transfers of this kind, and that transfers of holdings or parts of holdings which have taken place should not be recorded behind their backs and without their knowing it. But the section is in no respect vital to the Bill, and involves no principle, and it is for the Select Committee to be guided by the opinions they receive, and to decide whether the section should remain with more or less modification, or whether it should go out altogether.

"With these remarks, I will close the discussion of this subject, and I will only say with regard to the action of the Select Committee that if they find it possible to revise the Bill, although I know it requires a great deal of revision, and to make their report within a fortnight, it will be advantageous to the general procedure, and it will have the particular advantage of the assistance of the Hon'ble the Legal Remembrancer, who will be leaving at the end of that time; but if the report cannot be made before he leaves, his successor will take his place, and it will to a certain extent delay the completion of the work. I have no desire to press for any undue haste, but if the Select Committee find themselves able to bear this in mind and report the Bill within a fortnight, it will conduce to the general rapidity of the proceedings of the Council."

The Motion was put and agreed to.

[*Mr. Bourdillon; Sir John Lambert.*]

THE LEPERS BILL.

The Hon'ble MR. BOURDILLON presented the Report of the Select Committee on the Bill to provide for the segregation of pauper lepers, and the control of lepers exercising certain trades.

THE CALCUTTA AND SUBURBAN POLICE ACTS, 1866, AMENDMENT BILL.

The Hon'ble SIR JOHN LAMBERT presented the Report of the Select Committee on the Bill to further amend the Suburban Police Act, 1866, and the Calcutta Police Act, 1866.

The Council adjourned to Saturday, the 23rd instant.

GORDON LEITH,
Assistant Secretary to the Govt. of Bengal, Legislative Department.

CALCUTTA;
The 17th April, 1895.

Reg. No. 870-370-20-4-95.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892.

The Council met at the Council Chamber on Saturday, the 23rd March, 1895.

Present:

The Hon'ble Sir Charles Alfred Elliott, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The Hon'ble Sir Charles Paul, K.C.I.E., *Advocate-General.*

The Hon'ble H. J. S. Cotton, C.S.I.

The Hon'ble Sir John Lambert, K.C.I.E.

The Hon'ble D. R. Lyall, C.S.I.

The Hon'ble J. A. Bourdillon.

The Hon'ble Maulvi Abdul Jubbar, Khan Bahadur.

The Hon'ble F. R. S. Collier.

The Hon'ble C. E. Buckland.

The Hon'ble T. D. Beighton.

The Hon'ble R. C. Dutt, C.I.E.

The Hon'ble Surendranath Banerjee.

The Hon'ble L. Ghose.

The Hon'ble Maharaja Sir Luchmessur Singh Bahadur, K.C.I.E., of Darbhanga.

The Hon'ble Maulvi Serajul Islam, Khan Bahadur.

The Hon'ble W. C. Bonnerjee.

The Hon'ble J. G. Womack.

The Hon'ble Maulvi Muhammad Yusuf, Khan Bahadur.

The Hon'ble C. E. Smyth.

NEW MEMBERS.

The Hon'ble Messrs. Beighton and Smyth took their seats in Council.

LICENSES FOR ARMS.

The Hon'ble Babu Surendranath Banerjee asked:—

Whether the attention of the Government has been called to a statement which has appeared in the newspapers to the effect that the licenses for

arms which are being issued by the Magistrate of Dacca permit the carrying of arms only within the limits of the town or village where the holder of the license may happen to live? Whether it is true that it has hitherto been the practice at Dacca to grant licenses for the carrying of arms throughout the whole district, and with the authorization of the Commissioner throughout the whole Division? Will the Government be pleased to state why it has been found necessary to depart from the practice of previous years; and having regard to the complaints which the new orders have given rise to, will the Government be pleased to direct that the practice of the former years be followed, and that the license should authorize the carrying of arms throughout the whole district, or with the consent of the Commissioner throughout the whole Division?

The Hon'ble MR. COTTON replied:—

"The question of the Hon'ble Member has been transmitted to the Commissioner of the Dacca Division, with a request that he will report upon the facts of the case."

INSUFFICIENCY OF MUNSIFS.

The Hon'ble BABU SURENDRANATH BANERJEE asked:—

Is the Government aware that Munsifs through want of time and pressure of work have to put off from day to day the hearing and final disposal of many cases, and that parties and witnesses have to be in attendance in Court from day to day at great sacrifice and inconvenience to all concerned? Whether this state of things is not due to the insufficient number of subordinate Judicial Officers and to the circumstance that Munsifs have more work thrown upon them than they can cope with? If so, will the Government be pleased to add to the number of Munsifs?

Will the Government state the number of Munsifs employed in these Provinces in 1892-93, 1893-94 and 1894-95, the number of suits instituted before them, and the number disposed of by them in 1892-93, 1893-94, and the nine months of 1894-95?

The Hon'ble MR. COTTON replied:—

"The Lieutenant-Governor is afraid that the postponement of cases is too common in the Civil Courts, but he does not believe that the delay in the disposal of cases is due to any material extent to insufficiency in the number of

[*Mr. Colton.*]

Munsifs' Courts, since the number of cases disposed keeps fairly even with the number of cases instituted. His attention and that of the High Court have been directed to the abatement of the tendency and to the measures which should be taken to ensure the efficient performance of the work of the Courts. The High Court have recently added to the Register of Civil Suits a column showing the date of each adjournment, such as has always been done in Criminal Registers, so as to attract the eye of the District Judge or other inspecting officer to cases where postponements have been abnormally numerous and where enquiry is *primâ facie* called for. Moreover, the High Court have recently recommended, and the Lieutenant-Governor has sanctioned, the grant of Small Cause Court powers on an extended scale, so as to enable the Munsifs to deal with their cases expeditiously.

"Statistics of Civil Work are compiled by the calendar year. The following figures which have been extracted from the reports of the High Court on the administration of Civil Justice give the information desired by the Hon'ble Member:—

1	2	3		4		5	6
Year.	Number of Munsifs.	Original suits disposed of under Ordinary Procedure.		Original suits disposed of under Small Cause Court Procedure.		Total.	Average number of cases disposed of per Munsif.
		Contested.	Uncontested.	Contested.	Uncontested.		
1890 ...	262	77,069	244,673	11,168	74,908	407,809	1,556
1891 ...	275	76,815	252,339	12,660	91,075	432,889	1,574
1892 ...	285	84,729	267,647	18,988	137,804	509,168	1,786
1893 ...	289	82,170	268,210	21,610	151,835	523,825	1,812

"From this statement it will be seen that there has been a steady progressive improvement in the number of cases disposed of by each Munsif, and therefore presumably less delay in the disposal of cases. It will also be observed that a considerable increase in the number of Munsifs has been made during the past four years; a further increase in their numbers was sanctioned during the year 1894, and this, together with the enlargement of their summary powers, will, it is hoped, enable them to keep the work under."

THE BENGAL PROVINCIAL SERVICE BUDGET FOR 1895-96.

The Hon'ble MR. BOURDILLON laid on the table the Bengal Provincial Service Budget for 1895-96. He said:—

"With Your Honour's permission I will follow the precedent of last year, and, instead of reading the statistical document in my hands, will lay it on the table for the perusal of hon'ble members and for publication. I will ask the Members of this Council, after considering it, to submit, as soon as possible, any questions that they may desire to put in order that the answers may be given at the next sitting of the Council. I am sure hon'ble members will recognise that it is obviously desirable that this should be done in order that the Secretary who prepared this Budget may be able to reply to any questions which may be put in regard to it, instead of this task being left to his successor."

EXPLANATORY NOTE ON THE BENGAL PROVINCIAL SERVICES BUDGET FOR 1895-96.

PART I.—General Remarks.

I have now to submit to the Legislative Council the Budget for Provincial Services in Bengal for the official year 1895-96. This is the third occasion on which the Financial Statement for the Province of Bengal has been presented before this Council. On both previous occasions the system of Provincial Finance and the financial relations of the Supreme Government with that of Bengal were explained at some length. No change has been introduced during the past year in the arrangements described a year ago, and since many members of this Council were present at the Budget Debate of 1894, while for the remainder the necessary information is available in the Proceedings of this Council, I do not consider it necessary again to trace the history or expound the system of Provincial Finance.

2. Following the procedure adopted last year, I propose to divide my remarks into two parts—of which the first will deal with (1) the Closed Accounts of 1893-94, (2) the Revised Estimate for 1894-95, and (3) the Budget Estimate for 1895-96; while the second will treat in greater detail of the Budget of 1895-96.

(1) CLOSED ACCOUNTS OF 1893-94.

3. In the Financial Statement which was laid before the Council on 31st March, 1894, it was assumed that the year 1893-94 had opened with a credit

balance of Rs. 22,55,000, and had closed with a credit balance of Rs. 29,87,000; that the total amount available for expenditure during the year was Rs. 4,56,65,000, and that out of this sum Rs. 4,26,78,000 had been spent. The actual result as ascertained from the closed accounts proves to have been worse than this estimate by Rs. 3,63,000. The actual amount available for expenditure was Rs. 4,55,33,000, and the amount actually expended Rs. 4,29,09,000, so that the closing credit balance was Rs. 26,24,000 instead of Rs. 29,87,000. This reduction was caused by the actual receipts being less than the estimate by Rs. 1,32,000, while at the same time the expenditure exceeded the estimate by Rs 2,31,000.

4. The chief causes which led to the diminution of receipts were (1) the payment of about half-a-lakh to the Government of the North-Western Provinces and Oudh as Compensation for the loss sustained by that Government owing to orders forbidding the importation of Shahjehanpur Rum into Bengal except under bond; (2) a falling off of a lakh in the sale-proceeds of Jail Manufactures owing to smaller supplies to the Military and Opium Departments; (3) Railway Receipts being Rs. 90,000 below the estimate; and (4) a falling off of Rs. 20,000 in Registration Receipts owing to the reduction of the *ad-valorem* fee on documents not exceeding Rs. 50 in value from twelve annas to eight annas. Against these decreases there was an increase of about a lakh and three quarters under Irrigation Major Works owing to larger traffic on the Orissa Canals, and to the recovery of old outstandings on the Midnapore Canals, as well as improvements under other heads.

5. The increase of expenditure was chiefly under the heads of "Land Revenue" (Rs. 42,000); and "Salaries and Expenses of the Civil Department," specially under Courts of Law (Rs. 60,000), Jails (Rs. 45,000), Police (Rs. 43,000), Marine (Rs. 26,000), Education (Rs. 27,000), Medical (Rs. 14,000), and Scientific and other Minor Departments (Rs. 29,000). The increase under "Jails" was caused by the high prices of food-grains, and that under the head of "Scientific and other Departments" is attributable to the payment of the first instalment (Rs. 50,000) of the price of the Nimbong Cinchona Plantation. There was also an increase of Rs. 50,000 under "Miscellaneous," due partly to a special adjustment of Rs. 31,000 paid to the descendants of Khajeh Amir Shahid of Burdwan on

account of arrear charges for the maintenance of his tomb, and partly to a refund of percentage charges for treasury establishments levied in excess from District and Road Funds. Against these increases there was a saving of Rs. 1,46,000 under "Stationery and Printing," due to a more careful scrutiny of expenditure enforced under the orders of the Lieutenant-Governor.

6. The actual net result was a surplus of receipts over expenditure, amounting to Rs. 3,09,000 only, against one of Rs. 7,32,000 anticipated when the revised estimate for the year was passed.

(2) REVISED ESTIMATE FOR 1894-95.

7. The Budget Estimate for 1894-95, as adopted by the Government of India, assumed that the year would open with a credit balance of Rs. 29,87,000, that the total revenue would amount to Rs. 4,28,28,000, and the total expenditure to Rs. 4,35,98,000, so that the year would close with a balance of Rs. 22,17,000. The latest estimate available for the accounts of the year shows that the total receipts have been Rs. 4,42,97,000, which is better than was originally expected by Rs. 14,69,000, and that the expenditure has been Rs. 4,35,48,000, which gives a decrease of Rs. 50,000: the two together give a net betterment of Rs. 15,19,000, but there was a falling off of Rs. 3,63,000 in the expected amount of the opening balance.

8. The large increase of revenue in the revised as compared with the original estimate is mainly attributable to a sudden advance under Railways of Rs. 9,50,000 earned by the Eastern Bengal Railway chiefly in carrying jute. There was also a considerable increase under Stamps (Rs. 4,87,000), Excise (Rs. 1,12,000), Assessed Taxes (Rs. 1,00,000), Miscellaneous (Rs. 1,22,000), and Civil Works (Rs. 1,12,000), all of which figures denote a year of general prosperity. Smaller advances also appear under Salt (Rs. 40,000) and Land Revenue (Rs. 38,000). On the other hand against these increases decreases are anticipated under the heads of Jails (Rs. 1,75,000), caused by smaller demands for articles manufactured by the prisoners, Irrigation Receipts (Rs. 88,000), Registration (Rs. 45,000), and Courts of Law (Rs. 44,000). The net result of these variations from the Budget of 1894-95 is an increase in the closing balance of Rs. 11,56,000, from Rs. 22,17,000 to

[*Mr. Bourdillon.*]

Rs. 33,73,000, almost the whole of which is due to the unexpected increase in Railway Receipts.

(3) BUDGET ESTIMATE FOR 1895-96.

9. The Budget Estimate for 1895-96, as finally passed by the Government of India, accepts Rs. 33,73,000 as the opening balance, and contemplates receipts aggregating Rs. 4,41,97,000 and expenditure Rs. 4,43,08,00, leaving a closing balance of Rs. 32,62,000.

10. It is estimated that on the whole the receipts, though Rs. 13,09,000 better than the Budget of 1894-95, will be one lakh less than the revised estimate of the same year. The chief fluctuations compared with the revised estimate for 1894-95, are (1) an increased grant of one lakh from Imperial Funds for Customs Establishment, (2) an increased grant of Rs. 59,000 for the Hidgili Tidal Canal, and (3) an increase of Rs. 90,000 in Jail Receipts. To these direct increases should be added the sum of 3 lakhs, which, though levied by the Government of India in 1894-95 as a contribution from Provincial to Imperial Funds, will not be taken again in 1895-96: as the adjustment has been made under the Land Revenue head, it has been found convenient to treat the sum in 1895-96 not as a reduction of expenditure, but as an item of increased receipts. The items of increase thus aggregate Rs. 5,49,000. Against these it has been considered wise to budget for a decrease of Rs. 6,50,000 in receipts from Railways, since it is improbable that they will be so remunerative again. Thus the result, as already stated, is a decrease of one lakh in anticipated revenue.

11. On the expenditure side the total grant exceeds the revised estimate of 1894-95 by Rs. 7,60,000. A part of this extra expenditure (Rs. 2,18,000 according to figures supplied by the Accountant-General) is debitable to the payment of Exchange Compensation, but the advance of Police expenditure by Rs. 1,06,000 over the revised figures of the present year includes also a large proposed expenditure of about a lakh in carrying out some of the recommendations of the Police Commission. The head of "Customs" shows an increase of Rs. 80,000 required to meet the pay of the additional establishment necessitated by the reimposition of duties on cotton goods and yarns. The estimated expenditure under "Jails" also shows an increase of nearly a lakh, chiefly in the cost of raw materials. The grants for Public Works have been

raised by Rs. 2,34,000, while the estimate for Stationery and Printing has been reduced by nearly a lakh in pursuance of the economies inaugurated by the Lieutenant-Governor in a previous year.

12. The net result is as follows:—The total estimated revenue of the year, together with the opening balance, is Rs. 4,75,70,000. On the other hand, the sanctioned grant for expenditure in 1895-96 is Rs. 4,43,08,000 compared with Rs. 4,35,48,000, the revised estimate of 1894-95, and Rs. 4,35,98,000, the budget estimate of the same year; the closing balance is estimated at Rs. 32,62,000 as compared with Rs. 33,73,000 at the end of 1894-95, and Rs. 26,24,000 at the end of 1893-94.

PART II.

DETAILED REMARKS ON THE BUDGET FOR 1895-96.

RECEIPTS.

13. *Land Revenue.*—Little variation is possible in these figures. The average receipts during each of the past five years have been Rs. 3,87,17,000. The actuals in 1893-94 were Rs. 3,87,06,000, and the estimate for 1895-96 has been placed at Rs. 3,87,00,000. The 12 per cent. on collections from Government Estates for 1895-96 have been estimated at Rs. 4,77,000 against Rs. 4,75,000, the budget estimate for 1894-95 and the actuals of 1893-94 amounting to Rs. 4,78,505. Transactions of account between the Imperial and Provincial Funds are, for the sake of convenience, adjusted under the head of "Land Revenue," and the details of the calculations for 1895-96 are given below:—

	Estimate, 1895-96.
	Rs.
Fixed contribution to Imperial Revenue under the terms of the Provincial Contract	14,39,000
Add (payable to the Imperial Funds)—	
(*a*) Interest on the advance for the Hidgili Tidal Canal ...	26,000
Total to be deducted from the Provincial Share ...	14,65,000

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	Estimate, 1895-96.
	Rs.
Deduct (to be received from Imperial Funds)—	
(*b*) Advance for the remodelling of the Hidgili Tidal Canal	1,65,000
(*c*) Grant on account of Imperial Buildings placed under Local Bodies	10,000
(*d*) Compensation for loss sustained by the Provincial Revenues on account of the reservation of the Western Duars for the Khedda Department ...	18,000
(*e*) Grant for the additional establishment entertained in the Calcutta Custom House on the introduction of the new Tariff Acts	2,64,000
(*f*) Assignment for the Gnatong Police Guard ...	16,000
Total to be added to the Provincial Share ...	4,73,000
Net sum to be transferred to Imperial Funds out of the Provincial Share (one-fourth) ...	9,92,000

14. The estimated Provincial Share of Land Revenue is arrived at as follows:—

Heads.	Figures passed by Government.	
	Revised Estimate, 1894-95.	Estimate, 1895-96.
	Rs.	Rs.
Gross Land Revenue	3,86,50,000	3,87,00,000
Deduct 12 per cent. on estimated collections from Government Estates ...	4,75,000	4,77,000
Net amount divisible between Imperial and Provincial Funds	3,81,75,000	3,82,23,000
Provincial Share of above (one-fourth) ...	95,44,000	95,56,000
Deduct on account of Adjustments ...	14,60,000	9,92,000
Net ...	80,84,000	85,64,000
Add 12 per cent. Collections ...	4,75,000	4,77,000
Total Provincial Share	85,59,000	90,41,000

The above estimate does not include any provision for "Recoveries on account of the cost of Bihar Survey and Settlements." It is anticipated that Rs. 1,50,000 will be recovered in 1895-96, but this will be added to the Imperial Share of Land Revenue.

15. *Stamps.*—The Budget Estimate of total receipts in 1894-95 was Rs. 1,00,50,000. In view of the steady increase that has occurred in this branch of revenue during the last six years, averaging 4½ lakhs per annum, both the revised estimate for 1894-95 and the estimate for 1895-96 have been placed at Rs. 1,67,00,000. The Provincial Share is three-fourths of this sum and amounts to Rs. 1,25,25,000, which is an advance of Rs. 4,87,000 on the budget estimate of 1894-95.

16. *Excise.*—The progressive increase of Excise Revenue since 1890-91 has been as follows, giving an average annual advance of Rs. 5,61,000:—

	Rs.	Increase over preceding year. Rs.
1890-91	1,04,65,000	.....
1891-92	1,11,34,000	6,69,000
1892-93	1,15,94,000	4,60,000
1893-94	1,21,48,000	5,54,000

In the Resolution on the administration of the Excise in Bengal during 1893-94, the Lieutenant-Governor pointed out that revenue had increased at a higher ratio than consumption in regard to the three important heads of Country Rum, Opium and Ganja, while the increase in the consumption of distillery liquor exceeded that of revenue chiefly in Bihar, where duty was intentionally reduced and revenue surrendered in order to check illicit distillation. In view of the steady increase above recorded and of the general prosperity which the good crops of 1894-95 may be expected to induce, the estimate for 1895-96 has been placed at Rs. 1,27,00,000. The Provincial Share is one-fourth, and amounts to Rs. 31,75,000, which is a lakh and a half higher than the budget estimate of the current year.

17. *Provincial Rates.*—The Budget Estimate of total revenue from Provincial Rates for 1895-96 amounts to Rs. 42,81,000, or Rs 3,79,000 less than the budget estimate of the previous year. The decrease is chiefly nominal, and

is due to the fact that, owing to a change in the mode of adjusting the cost, no credit has been taken in the Provincial Accounts for "Recoveries of the proportionate cost of establishment for collecting Road Cess." The amount will now be debited direct to the District Funds in the Local Funds Budget instead of being passed through both sides of the Provincial Accounts.

18. *Assessed Taxes.*—The Budget Estimate of total revenue from Assessed Taxes for 1894-95 amounts to Rs. 43,00,000. The actual receipts in 1893-94 were Rs. 43,50,479, and the collections in the first ten months of the current year show an increase of Rs. 1,12,000 as compared with those of the corresponding period of last year. The increase is attributable partly to better assessments, and partly to prompter payments, which latter cause would lead to an expectation of smaller receipts during the remainder of the year; but, looking to the steady growth of revenue under this head from year to year, the revised estimate for 1894-95 and the estimate for 1895-96 have each been placed at Rs. 45,00,000. The Provincial Share is one-half and amounts to Rs. 22,50,000, which is one lakh better than the Budget of 1894-95.

19. *Forests.*—The total receipts of the Forest Department are estimated at Rs. 8,10,000 against Rs. 8,02,000, the actuals of 1893-94, and Rs. 8,00,000, the revised estimate of 1894-95. The Government of India have recently proposed certain relaxations of the restrictions hitherto imposed upon the grazing of cattle in Government Forests, and the Inspector-General of Forests has been requested to suggest the best method of giving effect to the principles now laid down for adoption. It is possible that some reduction of income may ensue, but pending receipt of further information, the estimate of total receipts for 1895-96 has been retained at Rs. 8,10,000. One-half is Provincial.

20. *Registration.*—The actual receipts of 1893-94 amounted to Rs. 13,89,000 in round numbers and the Budget Estimate of 1894-95 was Rs. 14,50,000. The small amount of the receipts in 1893-94 has been attributed chiefly to the orders reducing the minimum *ad valorem* fee for Registration from annas 12 to annas 8, which took effect from the 1st July, 1893. These orders are still in force, and will continue to affect the receipts during 1894-95; but as the reduction of the fee did not prevent an increase of 50,182 in the number of Registrations in 1893-94, and a further increase is anticipated during 1894-95, the revised estimate for the current year has been placed at Rs. 13,60,000, and

for 1895-96 the estimate has been raised to Rs. 14,00,000. One-half of these receipts is Provincial.

21. *Jails.*—The Budget Estimate for 1894-95 was fixed at Rs. 9,55,000. In view of smaller receipts from cash sales of manufactured articles and from supplies to Departments, and the actuals of the twelve months ending 31st December, 1894, amounting to Rs. 7,45,000, the revised estimate has been reduced to Rs. 7,80,000. On the average of past actuals, the estimate for 1895 96 has been placed at Rs. 8,70,000.

22. *Marine.*—The Revised Estimate, based on actuals of the earlier months of the current year, has been placed at Rs. 9,45,000 against Rs. 9,34,000, the actuals of 1893-94. In view of the fact that the imposition of import duties on cotton goods may possibly prevent any further increase in the trade of the Port of Calcutta, the estimate for next year has been placed at Rs. 9,40,000.

23. *Scientific and other Minor Departments.*—The total receipts for next year are estimated at Rs. 1,99,000 against Rs. 1,85,000 the revised, and Rs. 1,74,000 the budget estimate for 1894-95. The increase is expected chiefly from larger sales of Quinine and from a new item, viz. "Veterinary Receipts."

24. *Miscellaneous.*—The receipts under this head are essentially fluctuating and difficult to forecast, and the estimate for next year has been placed at Rs. 8,62,000 with reference to the average actuals of past years, although it is much below Rs. 9,35,000, the revised estimate of 1894-95.

25. *Railways.*—Under the terms of the Provincial Contract the Local Government has been relieved of all responsibility in the matter of Railway Administration, though the Province receives half the net earnings of the Eastern Bengal State Railway. The Government of India estimate the Provincial Share of these receipts for 1894-95 at Rs. 43,00,000, against Rs. 33,50,000 Anticipated when the Budget was originally passed. The increase is attributable to a large extent to increased receipts for carrying a heavy jute crop. For next year the estimate has been placed at Rs. 36,50,000, for although the Eastern Bengal Railway is doubtless an improving property, it would be unsafe to expect the recurrence of a third year of such high profits as the present and the past.

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EXPENDITURE.

26. *Land Revenue.*—The total Provincial Expenditure under this head in 1893-94 was Rs. 35,30,000, and in consideration of the actuals in the first eight months of the current year, the revised estimate for 1894-95 has been placed at Rs. 36,00,000. The estimate of expenditure for next year has been fixed at Rs. 36,88,000, which includes a grant of Rs. 50,000 for agricultural improvements in Government Estates, an item which has hitherto been debited to Irrigation—Minor Works. As compared with the budget grant for 1894-95, there is an increase of Rs. 1,15,000 under "Charges of District Administration," which is due (*a*) to a larger provision of Rs. 60,000 for Exchange Compensation Allowance, (*b*) to increased provision for Clerks who are required in the Certificate Department (Rs. 10,000), (*c*) to increased provision under Partition Establishment necessitated by an increase of work in that Department (Rs. 6,000), and (*d*) to an increased grant for the Survey of Waste Lands in Jalpaiguri (Rs. 18,000). The advance of Rs. 10,000 under "Land Records and Agriculture" is chiefly due to the provision of Rs. 3,000 for the local allowance to the Director of Land Records and Agriculture, sanctioned by the Secretary of State, and also for increased provision under "Establishment and Contingencies," with reference to past actuals.

27. *Salt.*—The estimated expenditure in 1894-95 was Rs. 33,000. In consequence of the large importations of Salt during the current year, it has been necessary to make additional grants (1) for extra establishment, (2) for structural alterations in the salt warehouses, and (3) for the hire of extra accommodation required at the Kidderpore Docks; and in view of these facts, the revised estimate for 1894-95 has been placed at Rs. 40,000. The total expenditure for 1895-96 is estimated at Rs. 36,000, as it will probably not be necessary to incur again construction charges such as those referred to above.

28. *Stamps.*—The actual expenditure of 1893-94 was Rs. 6,32,000, and the budget estimate of 1894-95 was Rs. 6,82,000, the revised falling to Rs. 6,73,000. The estimate of total expenditure for 1895-96 amounts to Rs. 6,95,000, which is expected to be Rs. 22,000 higher than the revised estimate of the current year. The increase is chiefly in the cost of "Stamp Paper supplied from Central Stores." This increase is a necessary complement of the more extensive use of Stamps and of the consequent increase

in receipts, as it is caused by the larger supplies of paper taken out in order to be impressed with Stamps, and also to be sold for use with adhesive Stamps. The Provincial Share is three-fourths or Rs. 5,22,000.

29. *Excise.*—The variations under this head are extremely small, the estimated expenditure in a total of Rs. 1,66,000 being only Rs. 6,000 higher than the revised estimate of 1894-95.

30. *Provincial Rates.*—As compared with the budget estimate of 1894-95, there is a great apparent decrease in the revised estimate of 1894-95 and the budget of 1895-96 of Rs. 3,22,000 and Rs. 3,11,000 respectively, which is due to a change in the mode of adjusting the cost of charges for the collection of Cesses and the valuation and revaluation of Estates, as has already been explained.

31. *Customs.*—Almost the whole of the expenditure under this head is incurred in Calcutta. The increase in these charges, amounting in the revised estimate for 1894-95 to Rs. 1,95,350 above the figures of the budget estimate, and in the budget for 1895-96 to another Rs. 79,140, is due to the cost of additional establishment, the entertainment of which is necessitated by the passing of the Tariff Acts VIII and XVI of 1894. The provision is at present tentative only, as the Supreme Government has not yet formally accepted the proposals of the Lieutenant-Governor.

32. *Assessed Taxes.*—The total expenditure of the Income-tax Department for 1894-95 was originally estimated at Rs. 1,88,000, and this amount has been reduced to Rs. 1,82,000 in the revised estimate for 1894-95, while the estimate for next year stands at Rs. 1,90,000. The estimate for 1895-96 includes for the first time a provision of Rs. 3,500 to meet the salary of occasional and temporary peons employed in the mufassal for the realization of the arrears of Income-tax which has hitherto been charged against Land Revenue. The provision has been made on the understanding that the receipts from Process-fees earned by these peons will be credited to the head of Income-tax.

33. *Registration.*—The figures for 1895-96 exceed by Rs. 32,000 those in the budget for 1894-95, chiefly because under "District Charges" larger provision has been made on account of commission payable to Special and Rural Sub-Registrars—a necessary consequence of the establishment of new offices and of the anticipated increase in Registrations. A smaller sum has been provided

under "Superintendence," partly owing to the reduction in the salary of the Inspector-General of Registration, and partly because the present incumbent is not entitled to the Exchange Compensation Allowance.

34. *General Administration.*—The estimate of expenditure under this head during 1895-96 amounts to Rs. 17,08,000 against Rs. 16,77,000, the budget estimate, and Rs. 17,20,000, the revised estimate for 1894-95; in the net increase of Rs. 31,000 over the budget estimate of 1894-95 the principal items are "Civil Secretariat" (Rs. 13,000) and "Commissioners" (Rs. 33,000). With regard to the first-named head, the increased provision during 1895-96 is due to larger deductions having been made on account of probable savings in 1894-95. The increase under "Commissioners" is partly due to the provision of Rs. 13,000 made towards the construction of a new steamer for the Chittagong Division, and partly to smaller deductions on account of probable savings in 1895-96.

35. *Law and Justice—Courts of Law.*—The estimate of total expenditure for 1895-96 amounts to Rs. 90,32,000, which provides for an increase of Rs. 1,56,000 on the budget estimate, and of Rs. 1,37,000 on the revised estimate for the current year, of which Rs. 1,50,000 arises from the growth of Exchange Compensation Allowance. The other increases of expenditure are due to the appointment of two new Munsifs and of additional establishment in the Courts of Munsifs (Rs. 20,000), and to the ordinary growth of charges for copying, process-peons, &c. (Rs. 12,000), which necessarily accompanies increased litigation. On the other hand, there is a decrease of Rs. 34,000 caused by the elimination from the Budget of provision for the salaries of eight Munsifs and one Subordinate Judge employed in Assam, which were erroneously included in the budget for 1894-95.

36. *Law and Justice—Jails.*—The estimate of total expenditure sanctioned for 1895-96 amounts to Rs. 21,47,000. The general result as compared with 1893-94 is an increase of Rs. 72,529, and as compared with the budget of 1894-95 a decrease of Rs. 97,000. The heads in which the largest fluctuations occur are those of "Supplies and Services" and "Manufactures." The expenditure under the former head chiefly depends on the number of prisoners in Jail and the price of provisions. There has of late been a continued increase in both these factors, but in the coming year it is expected that the prosperity caused by a good harvest will lower the price of provisions and cause a decrease of crime.

The chief items of expenditure under the head "Manufactures" are raw materials and purchase of machinery. A high figure was granted under these heads in the budget of 1894-95, which does not seem likely to be worked up to, and the grant for 1895-96 has been fixed upon a consideration of the average figures for the last five years.

37. *Police.*—The anticipated expenditure in 1895-96 is Rs. 60,18,000 as against Rs. 55,93,000 in 1893-94, and a revised estimate of Rs. 59,12,000 in 1894-95. Over the budget estimate of 1894-95 the increase is Rs. 1,26,000.

38. Under the head of "Presidency Police," the estimate passed for 1895-96 is larger than the budget estimate for 1894-95 by Rs. 17,000. A portion (Rs. 8,000) of this increase is due to the larger provision made for Exchange Compensation Allowance and another (Rs. 2,000) to the increase in the number of Guards for Public Buildings required for the Calcutta Collectorate. A new provision of about Rs. 6,000 has been made for refunds with reference to the actuals, which in 1893-94 amounted to Rs. 8,043. The increase of Rs. 3,000 in the estimate for 1895-96 under (3) "Superintendence," over the budget estimate for the current year, is attributable to the increase of establishment sanctioned for the office of the Inspector-General, and to Exchange Compensation Allowance.

39. Comparing the Budget Estimates for 1894-95 and 1895-96, the net increase under the head of "District Executive Force" amounts to Rs. 98,000. The chief items under this head are a provision of Rs. 1,01,000 to enable the Inspector-General of Police to carry out further, during 1895-96, the reforms recommended by the Police Committee. Provision has been made for an increase of 563 in the number of Constables and of 219 in the number of Sub-Inspectors, involving an increased cost of Rs. 1,37,000, against a reduction of 196 in the number of Head-Constables, resulting in a decrease of Rs. 32,000 in cost. Another large item is that of Rs. 1,59,000 provided mainly to meet the additional charge for "Station Charge Allowances," the grant of which is also one of the recommendations of the Police Committee; a provision of Rs. 10,000 has also been made for a school for the training of Sub-Inspectors. By these means the Lieutenant-Governor will be able to take a large step towards fulfilling the recommendations of the Police Commission, and will leave little to be done in future years.

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40. There is a provision of Rs. 16,000 under "Special Police" on account of the Military Police Guard to be enlisted for service at Gnatong. The cost of maintaining this Garrison at Gnatong will be met from the Imperial Revenues by a corresponding annual assignment of Rs. 15,650 which will be adjusted under the head of "Land Revenue."

41. *Education.*—The total sum spent by Government on Education from Provincial Revenues, or under its auspices from Local Funds, is not shown under this head, but is distributed over several budgets, viz., the Medical Budget for Medical Education, the Public Works Budget, which deals with the construction and repairs of school buildings, and the Budgets of District Boards and Municipalities, which contain contributions from Provincial Revenues for scholastic purposes. Recognising the incomplete character of the figures contained in the Educational Budget strictly so called, the Lieutenant-Governor has caused to be prepared a statement of which the following is an abstract, showing the true total of expenditure on Education in these Provinces during 1893-94, 1894-95 and 1895-96:—

Source of provision.	1893-94.	1894-95.	1895-96.
1	2	3	4
	Rs.	Rs.	Rs.
Provincial Funds	30,20,304	30,14,681	31,10,990
District Funds	10,83,441	10,86,000	12,24,343
Mohsin Fund	69,833	81,000	67,153
Other sources	18,794	10,051	8,645
Total ...	41,92,372	41,91,732	44,11,131

No figures are given for Municipal Expenditure, as the returns received are incomplete for 1894-95 and 1895-96. The actual expenditure in 1893-94 was Rs. 93,201.

42. It is further to be noticed that out of the sum shown as contributed by District Funds, Rs. 10,39,177 (which will be increased from the year 1895-96 to Rs. 10,99,177) represent the amount made over by Government annually to District Boards for the maintenance of schools under their control. Consequently

as a matter of fact the true sum expended on Education from Provincial Revenues in each of the years under notice may be taken as Rs. 40,59,481, Rs. 40,53,858, and Rs. 42,10,167 respectively as shown below. The other noteworthy points in these figures are the large rise in the expenditure from the Mohsin Fund in 1894-95 and the steady decrease in the contributions from "Other sources."

43. The figures contained in the Provincial Budgets under the heads of Education, Medical and Public Works stands as follows for the past, the present, and the coming year—

BUDGETS.	1893-94.	1894-95.	1895-96.
1	2	3	4
	Rs.	Rs.	Rs.
Education	25,72,110	26,10,000	26,72,000
Medical	2,90,253	2,95,000	3,02,000
Public Works Department	1,57,941	1,09,681	1,36,990
Total ...	30,20,304	30,14,681	31,10,990
Add Contributions to District Funds ...	10,39,177	10,39,177	10,99,177
GRAND TOTAL ...	40,59,481	40,53,858	42,10,167

44. Turning to the Education Budget proper as it now stands, the estimate for 1895-96 exceeds the budget estimate of 1894-95 by Rs. 26,000, and the revised estimate by Rs. 62,000. Under the head of "Inspection" there is a decrease of Rs. 30,000, being the pay and allowances of 25 Sub-Inspectors who will be placed under District Boards with a contribution from Government to that amount which will appear in another Budget. This sum forms part of the additional Rs. 60,000 mentioned in paragraph 42.

45. *Medical.*—The estimates for 1895-96 show an increase of Rs. 1,15,000 over those originally sanctioned for 1894-95, but of Rs. 29,000 only over the revised estimate of the same year. Of the increase first named, Rs. 60,000 is accounted for by Exchange Compensation Allowance. The orders of the Government of India establishing a reserve of Medical Officers involve an increased provision of Rs. 25,000, while in order to meet the increased activity of the

Sanitary Department an additional grant of Rs. 15,000 has been sanctioned for Travelling Allowance. A sum of Rs. 8,400 will be expended on improvements at Medical Schools and Colleges.

46. *Scientific and other Minor Departments.*—The estimate of expenditure for 1895-96 under this head amounts to Rs. 4,61,000 against Rs. 4,42,000, the budget estimate for 1894-95, and Rs. 4,37,000, the revised estimates of the same year, giving an increase of Rs. 19,000 over the budget and of Rs. 24,000 over the revised estimate of 1894-95. The only item which shows considerable increase is that of "Cinchona Plantation," and in this case it is due to the provision of Rs. 71,000, the last instalment of the purchase-money of the Nimbong Plantation, against Rs. 50,000, the amount paid during the current year.

47. *Stationery and Printing.*—The estimate under this head is less than the budget estimate of 1894-95 by Rs. 60,000, and than the revised estimate by Rs. 98,000. The greater part of this decrease appears under the head of "Stationery supplied from Central Stores," the estimate for which has been reduced by Rs. 70,000. Measures have been taken by Government and the Board of Revenue to effect as much economy as possible in the number of forms printed and in the quality and size of paper used for them, as well as in the consumption of forms and of stationery proper, and the Lieutenant-Governor hopes that it will be possible to make a still further reduction without at all impairing the efficiency of the Department.

48. *Miscellaneous.*—The estimate for 1895-96 of the somewhat heterogeneous items of expenditure classed under "Miscellaneous" is Rs. 17,000 higher than the budget of 1894-95, but Rs. 1,000 lower than the revised estimate of the same year. The principal item is an increase of Rs. 10,000 under "Rents, Rates and Taxes," which is mainly due to the enhancement of the municipal assessment on the Bengal Secretariat Building in Calcutta.

49. The detailed figures of the heads under the control of the Public Works Department are not yet available, but will be laid upon the table on a future occasion.

J. A. BOURDILLON,

The 22nd March, 1895. *Offg. Secretary to the Govt. of Bengal,*

Financial Department.

BENGAL PROVINCIAL REVENUE.

(In rupees, omitting 000's.)

HEADS.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.
1	2	3	4	5
Opening Balance ...	22,55	29,87	26,24	83,73
Principal Heads of Revenue—				
I.—Land Revenue ... { Proper ...	1,00,36	99,81	1,00,19	1,00,33
{ Adjustments ...	—14,57	—16,08	—14,60	—9,92
III.—Salt	77	80	120	95
IV.—Stamps	1,19,82	1,20,38	1,25,25	1,25,25
V.—Excise	30,37	30,25	31,37	31,75
VI.—Provincial Rates	46,13	46,60	43,00	42,81
VII.—Customs	59	55	65	61
VIII.—Assessed Taxes	21,75	21,50	22,50	22,50
IX.—Forests	4,01	400	4,00	4,05
X.—Registration	6,95	725	6,80	7,00
Total ...	3,16,18	3,15,06	3,20,36	3,25,38
XII.—Interest	1,38	2,12	1,86	2,36
Post-Office, Telegraph and Mint—				
XIII.—Post-Office	4	5	5	5
Receipts by Civil Department—				
XVI.—Law and Justice—				
Courts of Law	8,97	9,04	8,60	8,90
Jails	8,08	9,55	7,80	8,70
XVII.—Police	2,44	2,40	2,50	2,43
XVIII.—Marine	9,34	9,19	9,45	9,40
XIX.—Education	5,69	5,70	5,70	5,70
XX.—Medical	1,90	1,77	2,10	2,00
XXI.—Scientific and other Minor Departments	1,83	1,74	1,85	1,99
Total ..	38,25	39,39	38,00	39,12
Miscellaneous—				
XXII.—Receipts in aid of Superannuation ...	79	72	68	68
XXIII.—Stationery and Printing	1,26	1,22	1,22	1,27
XXV.—Miscellaneous	8,63	8,13	9,35	8,62
Total ...	10,68	10,07	11,25	10,57
Railways—				
XXVI.—State Railways (Net receipts) ...	35,35	33,50	43,00	36,50
Irrigation—				
XXIX.—Major Works (direct receipts) ...	16,72	15,00	14,60	15,00
XXX.—Minor Works and Navigation—				
By Public Works Department ...	7,45	8,15	6,80	7,25
„ Civil Department ...	1,28	1,16	2,03	1,61
Total ...	25,45	24,31	23,43	23,86
Buildings and Roads—				
XXXII.—Civil Works—				
By Public Works Department ...	3,07	1,50	2 45	1,80
„ Civil Department	2,38	2,28	2,45	2,38
Total ...	5,45	3,78	4,90	4,18
Contributions	.....	.....	12	.....
Total ...	4,32,78	4,28,28	4,42,97	4,41,97
GRAND TOTAL ...	4,55,33	4,58,15	4,69,21	4,75,70

(In rupees, omitting 000's.)

Heads.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.
1	2	3	4	5
Direct demand on the Revenues—				
1. Refunds and Drawbacks	1,57	1,55	1,51	1,52
2. Assignments and Compensations ...	1,69	1,79	1,65	1,72
3. Land Revenue	35,30	35,36	36,00	36,68
5. Salt	27	33	40	36
6. Stamps	4,74	5,12	5,05	5,22
7. Excise	1,62	1,67	1,60	1,66
8. Provincial Rates	4,28	3,96	74	85
9. Customs	5,42	5,79	7,75	8,55
10. Assessed Taxes	89	94	91	95
11. Forests	2,09	2,30	2,10	2,30
12. Registration	3,93	3,80	4,05	4,12
Total ..	61,63	62,61	61,70	64,18
13. Interest on Ordinary Debt	1,43	1,78	1,71	2,18
Post-Office, Telegraph and Mint—				
15. Post-Office	8	8	8	10
Salaries and Expenses of Civil Department—				
18. General Administration	17,05	16,77	17,20	17,09
19. Law and Justice { Courts of Law ...	88,20	88,76	88,95	90,32
{ Jails ..	20,75	22,44	20,50	21,47
20. Police	55,93	58,92	59,12	60,18
21. Marine	9,41	8,99	8,81	8,91
22. Education	25,72	26,46	26,10	26,72
24. Medical	17,14	17,04	17,90	18,19
25. Political	16	29	36	26
26. Scientific and other Minor Departments	4,52	4,42	4,37	4,01
Total ...	2,38,88	244,09	2,43,31	2,47,74
Miscellaneous—				
29. Superannuation, &c.	17,40	18,50	17,90	18,05
30. Stationery and Printing	12,60	13,76	14,14	13,16
32. Miscellaneous	2,86	2,27	2,45	2,44
Total ...	32,86	34,53	34,49	33,65
Railway (Revenue Account)—				
40. Subsidized Companies—Land, &c. ..	3	.....	.. ...	.... .
41. Miscellaneous Railway Expenditure ..	1	.....	.....	.....
Total ..	4	.....	.....	.....
Irrigation—				
42. Major Works—				
Working Expenses	14,55	14,70	14,67	14,90
Interest on Debt	24,42	24,59	24,58	24,68
43. Minor Works and Navigation—				
By Public Works Department ...	14,81	15,72	15,50	16,23
„ Civil Department	2	4	4	5
Total ..	53,80	55,05	54,79	55,85
Buildings and Roads—				
45. Civil Works—				
By Public Works Department ..	25,59	26,36	24,44	26,96
„ Civil Department	1,22	1,38	2,60	1,36
Total ...	26,81	27,74	27,04	28,32
Contributions	13,56	10,10	12,30	11,11
Total ...	4,29,09	4,35,98	4,35,48	4,43,08
Closing Balance	26,24	22,17	33,73	32,62
Grand Total ...	4,55,33	4,58,15	4,69,21	4,75,70
Provincial Surplus (+) or deficit (—)	+3,69	—7,70	+7,49	—1,11

APPENDIX A.

Bengal Provincial Receipts in detail of minor heads.

[The figures in columns 4 and 5 are those accepted by the Government of India.]

I.—Land Revenue—

HEADS.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	REMARKS.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Gross Land Revenue (excluding Recoveries of Bihar Survey and Settlement charges which are wholly Imperial)	3,87,06,000	3,85,00,000	3,86,50,000	3,87,00,000	
Deduct 12 per cent. on estimated collections from Government Estates	4,79,000	4,75,000	4,75,000	4,77,000	
Net amount divisible between Imperial and Provincial Funds	3,82,27,000	3,80,25,000	3,81,75,000	3,82,23,000	
Provincial Share of above (one-fourth)	95,57,000	95,06,000	95,44,000	95,56,000	
Deduct on account of adjustments as shown below*	14,57,000	16,08,000	14,00,000	9,92,000	
Net Receipts ...	81,00,000	78,98,000	80,84,000	85,64,000	
Add 12 per cent. Collections	4,79,000	4,75,000	4,75,000	4,77,000	
Total Provincial Share	85,79,000	83,73,000	85,59,000	90,41,000	

* *Adjustments—*

Fixed contribution to Imperial Revenue under the terms of the contract	14,39,000	14,39,000	14,39,000	14,39,000	
Add (payable to the Imperial Funds)—					
Interest on the advance for the Hidgili Tidal Canal	19,000	23,000	21,000	26,000	
Write-back of the excess credit (Rs. 44,000—32,000) taken in 1892-93 on account of Imperial Buildings made over to local agencies for execution	12,000	.....	.....	.....	
Compensation to the Government of North-Western Provinces and Oudh for the loss sustained by that Government for the importation of Shahjehanpur Rum under bond ...	52,000	.....	...	.....	
Special contribution to Imperial Funds ...	.....	3,00,000	3,00,000	... ...	
Repayment of part of the advance for the remodelling of the Hidgili Tidal Canal ...	8,000	.....	.....	.....	
Total to be deducted from the Provincial Share ...	16,30,000	17,62,000	17,60,000	14,65,000	
Deduct (to be received from Imperial Funds)—					
Advance for the remodelling of the Hidgili Tidal Canal	.....	1,26,000	1,06,000	1,85,000	
Grant on account of Imperial Buildings placed under local bodies	53,000	10,000	14,000	10,000	
Compensation for loss sustained by the Provincial Revenues on account of the reservation of the Western Duars for the Khedda Department	11,000	18,000	11,000	18,000	
Salary of Mr. H. Davis, Probationer Gardner at Sibpur	.....	.....	1,000	.....	
Write-back to the Provincial Funds of the contribution to the Provident Fund of the Tirhut State Railway charged in the accounts of 1892-93	9,000	.....	.....	.....	
Grant for the additional establishment entertained in the Calcutta Custom House on the introduction of the new Tariff Act ...	.....	.....	1,64,000	2,64,000	
Contribution towards the cost of a prison van for the conveyance of Convicts by rail ...	.....	.....	2,000	.....	
Assignment for the Gnatong Police Guard ...	... ...	... ...	2,000	15,000	
Total ...	73,000	1,54,000	3,00,000	4,73,000	
Net sum to be transferred ...	14,57,000	16,08,000	14,00,000	9,92,000	

III.—Salt—

Heads.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	Remarks.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Rents of Ware-houses...	43,000	50,000	80,000	67,000	The increase in 1894-95 is due to the larger stock of bonded salt in the golahs, owing to the unusually large importations of salt in that year.
Fines and Forfeitures...	.....	.....	.....	.....	
Miscellaneous	34,000	30,000	40,000	28,000	
Total Provincial ...	77,000	80,000	1,20,000	95,000	

IV.—Stamps—

Sale of General Stamps	44,37,000	44,35,000	44,90,000	44,80,000	There is a steady growth of revenue from this source especially under Court-fee Stamps.
Sale of Court-fee Stamps	112,65,000	1,13,50,000	1,19,28,000	1,19,30,000	
Sale of plain paper to be used with Court-fee Stamps	2,33,000	2,25,000	2,43,000	2,43,000	
Duty on impressing documents	8,000	8,000	8,000	8,000	
Fines and Penalties	30,000	30,000	31,000	31,000	
Miscellaneous	3,000	2,000	2,000	2,000	
Total ...	1,59,76,000	1,60,50,000	1,67,00,000	1,67,00,000	
Provincial Share—(three-fourths)...	1,19,82,000	1,20,38,000	1,25,25,000	1,25,25,000	

V.—Excise—

Licenses and Distillery Fees and Duties for the sale of Liquors and Drugs	91,35,000	91,15,000	94,00,000	96,30,000	The revenue shows a progressive increase since 1891-92.
Gain on sale-proceeds of Excise Opium	1,42,000	16,40,000	16,70,000	16,70,000	
Duty on Ganja	13,88,000	13,90,000	13,80,000	13,90,000	
Fines, Confiscations and Miscellaneous	13,000	15,000	10,000	10,000	
Total ...	1,21,48,000	1,21,60,000	1,25,50,000	1,27,00,000	
Provincial Share—(one-fourth)	30,37,000	30,35,000	31,37,000	31,75,000	

VI.—Provincial Rates—

Public Works Cess	41,34,000	42,00,000	41,63,000	41,46,000	The cost of collecting Road Cess was in 1893-94 and previous years treated as a Provincial Charge, a corresponding credit being given to Provincial from Local Funds. Owing to a change in the method of adjustment, which will be introduced in the accounts of 1894-95 and subsequent years, by which such charges will be debited direct to Local Funds, the formal credit to Provincial Funds will disappear.
Proportionate Cost of establishment for collecting Cesses	3,47,000	3,20,000	.....	.....	
General rates for management of Private Estates under Act X of 1892	1,38,000	1,40,000	1,35,000	1,35,000	
Total ...	46,19,000	46,60,000	43,00,000	43,81,000	

VII.— Customs—

HEADS.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	REMARKS.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Sea Customs—Miscellaneous	56,000	51,000	60,000	56,000	
Warehouse and Wharf Rent	3,000	4,000	5,000	5,000	
Total Provincial ...	59,000	55,000	65,000	61,000	

VIII.—Assessed Taxes—

Deductions by Government from Salaries and Pensions, &c.	4,79,000	4,85,000	4,80,000	4,80,000	
Deductions by Government from interest on Government Securities	14,000	16,000	16,000	16,000	
Deductions by Government from salaries, &c., paid by Local Authority or Company	48,000	45,000	53,000	53,000	
Deductions by Government from salaries, &c., paid by Railway Company	3,000	5,000	4,000	4,000	
Ordinary Collections	37,60,000	37,20,000	39,00,000	39,00,000	The increase is attributable to better assessments.
Penalties	31,000	33,000	31,000	31,000	
Miscellaneous	15,000	16,000	16,000	16,000	
Total ...	43,50,000	43,00,000	45,00,000	45,00,000	
Provincial Share—(one-half)	21,75,000	21,50,000	22,50,000	22,50,000	

IX.—Forests—

Timber and other produce removed from the Forests by Government Agency	15,000	20,800	27,300	19,200	
Timber and other produce removed from the Forests by Consumers or Purchasers	7,49,000	7,36,500	7,31,500	7,53,300	
Confiscated, drift and waif wood	13,000	12,200	12,000	11,500	
Miscellaneous	25,000	30,500	29,200	25,900	
Total ...	8,02,000	8,00,000	8,00,000	8,10,000	
Provincial Share—(one-half)	4,01,000	4,00,000	4,00,000	4,05,000	

X.—Registration—

Fees for registering Documents	13,36,000	13,94,000	13,06,000	13,48,000	An increase is expected in 1895-96 from more numerous Registrations owing to the opening of new offices.
Fees for copies of Registered Documents	19,000	20,000	18,000	18,000	
Miscellaneous	34,000	36,000	34,000	34,000	
Total ...	13,89,000	14,50,000	13,00,000	14,00,000	
Provincial Share—(one-half)	6,95,000	7,25,000	6,50,000	7,00,000	

XII.—Interest—

Heads.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	Remarks.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Class I.—Interest on advances to Cultivators—					
On advances to Cultivators under Land Improvement Loans Act ...	13,000	30,000	26,000	27,000	
On advances to Cultivators under Agriculturists' Act XXII of 1894 ...	19,000				
Class II.—Interest on advances under Special Loans—					
On Drainage and Embankment Advances	1,000	10,000	10,000	10,000	
Class III.—Interest on loans to Landholders, &c	21,000	22,000	19,000	21,000	
Class IV.—Interest on loans to Municipal and other Public Corporations (excluding Presidency Corporations) ..	24,000	85,000	67,000	1,18,000	The revised estimate for 1894-95 has been reduced with reference to demands recoverable in the year.
Interest on Government Securities	13,000	14,000	13,000	11,000	
Miscellaneous—					
Interest on Loans of Public Works Cess	42,000	40,000	48,000	45,000	
Interest on the capital cost of His Honour the Lieutenant-Governor's house, &c.	1,000	1,000	1,000	1,000	
Other items	2,000	1,000	1,000	2,000	
Interest on Zamindari Embankment Recoveries, &c.	2,000	...	1,000	1,000	
Total Miscellaneous ...	47,000	51,000	51,000	49,000	
Grand Total ...	1,33,000	2,12,000	1,86,000	2,36,000	

XIII—Post Office—

Receipts.					
Recoveries on account of establishment employed in the Postmaster-General's Office .	4,000	5,000	5,000	5,000	

XVIA.—Law and Justice—Courts of Law—

Sale proceeds of unclaimed and escheated Property	30,000	27,000	45,000	30,000	The revised estimate includes a special receipt in Patna.
Court fees realised in cash .. .	37,000	40,000	128,000	37,000	
General Fees, Fines and Forfeiture	7,92,000	8,00,000	7,45,000	7,85,000	
Pleadership Examination Fees	27,000	25,000	30,000	25,000	
Miscellaneous	11,000	12,000	12,000	13,000	
Total ..	8,97,000	9,04,000	8,60,000	8,90,000	

XVIB.—Jails—

Jails	5,000	5,000	5,000	5,000	
Jail Manufactures	8,03,000	9,50,000	7,72,000	8,64,000	Estimate based on past actuals.
Total ..	8,08,000	9,55,000	7,80,000	8,70,000	

XVII.—Police—

HEADS.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-96.	Estimate, 1895-96.	REMARKS.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Police supplied to Municipal, Cantonment and Town Funds	11,000	6,000	10,000	8,000	Based on the average actuals of past years.
Police supplied to public departments, private companies and persons	38,000	26,000	50,000	35,000	
Presidency Police	79,000	90,000	80,000	83,000	
Recoveries on account of Village Police	3,000	3,000	3,000	2,000	
Fees, Fines and Forfeitures	55,000	45,000	60,000	54,000	Increased receipts from Fees and Penalties under the Village Chaukidari Act.
Superannuation Receipts	.....	...	.....	500	
Miscellaneous	68,000	70,000	47,000	60,500	
Total ...	2,44,000	2,40,000	2,50,000	2,43,000	

XVIII.—Marine—

Sale proceeds of Vessels and Stores	2,000	1,000	2,000	3,000	
Registration and other fees	...				
Fees realized at the Shipping Office	33,000	35,000	40,000	37,000	
Examination Fees	2,000				
Other fees	1,000				
Pilotage Receipts { Calcutta	8,28,000	8,40,000	8,60,000	8,33,000	The receipts fluctuate with the amount of Shipping visiting the Port.
Pilotage Receipts { Chittagong	15,000			14,000	
Lead money to Volunteers	8,000			8,000	
Miscellaneous.					
Deduction for Mess money	12,000	12,000	12,000	12,000	
Marine Survey fees	28,000	26,000	26,000	28,000	
Other items	5,000	5,000	5,000	5,000	
Total Miscellaneous ...	45,000	43,000	43,000	45,000	
GRAND TOTAL ..	9,34,000	9,19,000	9,45,000	9,46,000	

XIX.—Education—

Fees, Government Colleges, General	1,73,000	1,60,000	1,72,000	1,75,000	
Ditto ditto, Professional ...	38,000	31,000	37,000	38,000	
Fees, Schools, General	3,12,000	3,20,000	3,12,000	3,10,000	
Ditto, Special	17,000	15,000	18,000	18,000	
Contributions from Native States, Private Persons and Municipalities	8,000	17,000	8,000	9,000	
Income from Endowments	9,000	10,000	10,000	7,000	
Miscellaneous	12,000	15,000	13,000	13,000	
Total ...	5,69,000	5,70,000	5,70,000	5,70,000	

XX.—Medical—

Medical Schools and College Fees	42,000	38,000	52,000	47,000	The actuals show a progressive increase.
Hospital Receipts	86,000	81,000	90,000	86,000	Based on actuals.
Lunatic Asylum Receipts	25,000	24,000	29,000	28,000	
Contributions (from Municipalities and Private Persons)	32,000	32,000	37,000	37,000	
Miscellaneous	2,000	2,000	2,000	2,000	
Total ...	1,90,000	1,77,000	2,10,000	2,00,000	

XXI.—Scientific and other Minor Departments—

Heads.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	Remarks.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Botanical and other Public Garden Receipts ...	5,000	5,000	5,000	5,000	
Cinchona Plantation	1,37,000	1,25,000	1,25,000	1,45,000	Increase anticipated in consequence of the more extensive sale of Quinine in pice packets.
Receipts on account of Experimental Cultivation ...	3,000	5,000	2,000	4,000	Based on the actuals of the past three years.
Emigration Fees	34,000	30,000	47,000	30,000	
Examination Fees	4,000	4,000	4,000	4,000	
Veterinary Receipts	.....	5,000	2,000	5,000	A new item of receipts estimated by the Director of Land Records and Agriculture.
Total ..	1,83,000	1,74,000	1,85,000	1,99,000	

XXII.—Superannuation—

Family Subscriptions of native members of the Covenanted Civil Service.	1,000	1,000	1,000	1,000	
Contributions of Officers lent to Municipalities or Corporations.	20,000	18,000		26,300	Estimates based on the actual demands in the Accountant-General's books. The decrease is partly due to the retirement of officers lent to Foreign Service, and partly to exemption from payment of contribution towards Pension by Sub Inspectors of Schools and Teachers, whose services have been transferred to District Boards.
Contributions of Officers lent to Foreign Service ...	44,000	41,700	67,000	23,000	
Contributions of persons employed by the Court of Wards.	13,500	11,000		11,400	
Refunds of Gratuities	500	300	...	300	
Total Provincial	79,000	72,000	68,000	68,000	

XXIII.—Stationery and Printing—

Stationery Receipts	1,000	1,000	1,000	1,000
Sale of Gazettes	18,000	19,000	19,000	19,000
Sale of Indian Law Reports	44,000	44,000	46,000	47,000
Sale of other publications	28,000	28,000	28,000	29,000
Other Press receipts	35,000	30,000	28,000	31,000
Total Provincial ...	1,26,000	1,22,000	1,22,000	1,27,000

XXV.—Miscellaneous—

Unclaimed Deposits	2,92,000	3,80,000	3,60,000	3,60,000	Estimate based on the average receipts of the past five years.
Sale-proceeds of Durbar Presents	2,000	10,000	20,000	15,000	Estimate based on the actuals of twelve months, ending the 30th September, 1894. The receipts in 1893-94 were unusually low.
Sale of old stores and materials	34,000	35,000	45,000	33,000	
Sale of lands and houses, &c.	27,000	2,000	11,000	5,000	The actuals of 1893-94 included a special receipt of Rs. 7,000 on account of sale of Railway Lands.
Fees for Government Audits (of Municipal and Incorporated Local Funds)	70,000	71,000	71,000	75,000	
Rents	28,000	20,000	28,000	25,000	Based on past actuals.
Miscellaneous Fees, Fines and Forfeitures	2,13,000	1,40,000	2,40,000	2,10,000	
Miscellaneous	1,94,000	1,55,000	1,60,000	1,47,000	The actuals include large realizations from the sale of elephants and special receipts from the sale of trees on waste lands in Jalpaiguri and Darjeeling.
Total Provincial ...	8,63,000	8,13,000	9,35,000	8,62,000	

XXVI.—State Railways—Eastern Bengal State Railway—

HEADS.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	REMARKS.
1	2	3	4	5	6
Gross Receipts...	Rs. 1,24,95,000	Rs. 1,22,00,000	Rs.	Rs.	The receipts under this head fluctuate so largely that the revised figures for 1894-95 can not be taken as a safe guide.
Working expenses	54,25,000	55,00,000	.....	.....	
Net Receipts	70,70,000	67,00,000	86,00,000	73,00,000	
Provincial Share (one-half)	35,35,000	33,50,000	43,00,000	36,50,000	

XXIX.—Irrigation—Major Works—

Orissa Canals...	3,76,000	3,40,000	3,19,000	3,28,000
Midnapore Canal	3,05,000	2,70,000	2,52,000	2,77,000
Hijili Tidal Canal	59,000	55,000	65,000	60,000
Sone Canals	9,32,000	8,35,000	8,24,000	8,35,000
Total ...	16,72,000	15,00,000	14,60,000	15,00,000

XXX.—Minor Works and Navigation in charge of the Public Works Department—

Irrigation and Navigation Works.				
Works for which Capital and Revenue Accounts are kept—				
Saran Canals	7,000	11,000	1,000	1,000
Calcutta and Eastern Canals	4,21,000	4,80,000	4,28,000	4,30,000
Orissa Coast Canal	98,000	82,000	65,000	88,000
Total ...	5,26,000	5,73,000	4,94,000	5,19,000
Works for which only Revenue Accounts are kept—				
Nadia Rivers	1,71,000	1,90,000	1,50,000	1,70,000
Works for which neither Capital nor Revenue Accounts are kept—				
Eden Canal	37,000	40,000	30,000	30,000
Total Irrigation and Navigation Works ...	7,34,000	8,03,000	6,74,000	7,19,000
* *Agricultural Works.*				
Works for which neither Capital nor Revenue Accounts are kept—				
Government Embankments	7,000	8,000	5,000	8,000
Takavi Embankments under contract	4,000	4,000	1,000	1,000
Total Agricultural Works ...	11,000	12,000	6,000	9,000
GRAND TOTAL ...	7,45,000	8,15,000	6,80,000	7,28,000

XXX.—Minor Works and Navigation in charge of Civil Officers—

Heads.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	Remarks.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Recoveries on account of Zamindari Embankments under the contract system	1,08,000	1,03,000	1,03,000	1,13,000	
Recoveries on account of capitalized maintenance charges of the Dankuni Drainage System	17,000	10,000	13,000	4,000	
Receipts of the Dankuni and Howrah Drainage Schemes	3,000	3,000	7,000	4,000	
Recoveries on account of capitalized maintenance charges of the Howrah Drainage Scheme—Maintenance and Establishment	.....	.....	78,000	40,000	
Total ...	1,28,000	1,16,000	2,03,000	1,61,000	

XXXII.—Civil Works in charge of the Public Works Department—

Ordinary Receipts	.....	1,20,000	*2,15,000	† 1,50,000	* Include the following special receipts :— Rs. Sale proceeds of Dák bungalow and Circuit house at Chittagong ... 11,200 Sale proceeds of lands in the Police compound, Calcutta ... 10,000 Expected sale proceeds of Manicktolla Distillery ... ... 40,000 Increase of rents of Government Buildings owing to the revised assessment 30,000 Total ... 91,200 † The increase of Rs 30,000 in the budget estimate for 1895-96 over the budget estimate for 1894-95 is also due to the anticipated increase in the rents of Government Buildings owing to the revised assessments of those buildings.
Profits payable by the Darjeeling-Himalyan Railway	.....	30,000	30,000	30,000	
Total ...	‡ 3,07,000	1,50,000	2,45,000	1,80,000	‡ The actuals include (1) the Government share of the profits of the Darjeeling-Himalyan Railway for four years ending the 30th June 1893, and (2) the gross profit of Rs 30,000 on the working of the Calcutta Workshops.

XXXII.—Civil Works in charge of Civil Officers—

Tolls on Ferries	2,35,000	2,25,000	2,42,000	2,35,000
Cemetery Receipts	1,500	2,500	2,000	2,000
Miscellaneous	1,500	500	1,000	1,000
Total ...	2,38,000	2,28,000	2,45,000	2,38,000

APPENDIX B.

Bengal Provincial Expenditure in detail of minor heads.

[The figures in columns 4 and 5 are those accepted by the Government of India.]

1. *Refunds and Drawbacks—*

HEADS.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	REMARKS.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Provincial Rates	8,000	9,000	9,000	8,000	Based on the average actuals of the past three years. The increase under Excise in 1893-94 was due to a special payment of Rs. 42,000 to Messrs. Carew and Company on account of extra duty on Rum.
Salt (other than Customs and Excise duty)	... ..	.....	.. ...	.... .	
Customs (other than Export and Import duty) ..	.. .	..	.. ..	1,000	
Land Revenue (one-fourth)	13,000	11,000	15,000	12,000	
Stamps (three-fourths)	1,08,000	1,08,000	1,02,000	1,06,000	
Excise (one-fourth)	13,000	1,000	3 000	2,000	
Assessed taxes (one-half)	14,000	24,000	19,000	21,000	
Forest (one-half)	...	1,000	1,000	1,000	
Registration (one-half)	1,000	1,000	2,000	1,000	
Total ...	1,57,000	1,55,000	1,51,000	1,52,000	

2. *Assignments and Compensation—*

Malikana	1,59,000	1,70,000	1,55,000	1,72,000	The estimates of District Officers as passed by the Board of Revenue have been accepted. This is a compulsory charge and varies from year to year according to resettlement or new-settlement of Estates.

3. *Land Revenue—*

Charges of District Administration	30,46,000	30,60,000	31,13,000	31,84,000	Increase chiefly for Exchange Compensation Allowance, and partly for increases under certificate Department, (transferred from Provincial Rates), Partition Establishment, and survey of waste lands in Jalpaiguri
Management of Government Estates	4,03,000	3,87,000	4,00,000	4,14,000	In the estimates for 1895-96 a provision of Rs. 50,000 has been made to meet the cost of works of agricultural improvement in Government Estates by a corresponding reduction in the Public Works Department grant for Irrigation Minor Works.
Land Records and Agriculture	81,000	89,000	87,000	90,000	The increase is due partly to increased charges for temporary establishment, and partly for the payment of Local Allowance to the Director of Land Records and Agriculture.
Total ...	35,30,000	35,36,000	36,00,000	36,88,000	

5. *Salt—*

Heads.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	Remarks.
1	2	3	4	5	6
Salaries, Establishment and Contingencies ...	Rs. 27,000	Rs. 33,000	Rs. 40,000	Rs. 36,000	The increase in 1894-95 was due chiefly to the hiring of sheds at the Kidderpore Docks for the storage of the unusually large importation of Salt, and partly for the temporary establishments in connection therewith, and also for minor local allowances in the Salt Warehouses. The estimate for 1895-96 also provides for increased expenditure in the hire of godowns rents for the storage of Salt.

6. *Stamps—*

Superintendence	83,000	83,000	78,000	86,000	The decrease in 1894-95 is chiefly in consequence of the appointment of a lower paid officer as Superintendent of Stamps in place of the permanent incumbent on leave in England.
Charges for the sale of General Stamps	1,05,000	1,07,000	1,07,000	1,08,000	
Charges on sale of Court-fee Stamps	1,15,000	1,21,000	1,14,000	1,18,000	
Discount on plain paper	14,000	14,000	14,000	14,000	
Stamp Paper supplied from Central Stores	3,17,000	3,57,000	3,57,000	3,69,000	The increase is a necessary concomitant of the increase in receipts, as it is caused by the larger supplies of paper taken out to be impressed with stamps, and also to be sold for use with adhesive stamps.
Total ...	6,32,000	6,82,000	6,73,000	6,95,000	
Provincial Share (three-fourths)	4,74,000	5,12,000	5,05,000	5,22,000	

7. *Excise—*

Superintendence	64,000	71,000	66,000	73,000	Rupees 4,000 have been provided for Exchange Compensation Allowance and Rs. 1,500 for Local Allowances of Rs. 60 per mensem to each of the two Inspectors.
Presidency Establishment	86,000	97,440	85,000	90,000	
District Establishment—					
Sadar Establishment	1,03,000	1,04,268	2,02,000	1,00,212	
Inspection and Prevention	1,61,000	1,57,932		1,58,502	
Allowances	86,000	78,863	2,28,000	84,020	
Distilleries Establishment	63,000	62,296		63,612	
Supplies and Services	27,000	27,045		27,000	
Contingencies	62,000	70,256		70,568	
Total ...	6,46,000	6,70,000	6,40,000	6,74,000	The saving in 1894-95 is chiefly in the charges for Contingencies and for the construction of Distillery Buildings.
Provincial Share (one-fourth)	1,62,000	1,67,000	1,60,000	1,68,000	

8. *Provincial Rates—*

Collection of Rates and Cesses	3,01,000	3,16,200	44,500	44,500	The decrease is due to a change in the mode of adjusting the cost of collection and valuation and revaluation charges, which from the year 1894-95 will be debited direct to the District Funds in the Local Funds Account, instead of being passed through the Provincial Accounts.
Valuation and revaluation work	1,27,000	79,800	29,500	40,500	
Total ...	4,28,000	3,96,000	74,000	85,000	

9. *Customs—*

HEADS.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	REMARKS.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Calcutta { Establishment	4,59,000	4,73,602	7,34,000	8,13,140	The increase in 1894-95 is for additional establishment entertained in the Calcutta Custom House consequent on the introduction of the new Tariff Act. Further increased provision has been made in 1895-96 for additional establishment required on the re-imposition of the Cotton duties.
Exchange Compensation Allowance ...	9,000	10,846			
Contingencies	33,000	48,222			
Balasore	5,000	4,920	5,000	4,000	
Chittagong	27,000	26,500	27,000	27,400	
Cuttack	7,000	6,700	7,000	7,400	
Dacca	1,000	720	1,000	720	
Puri	1,000	1,490	1,000	1,440	
Total ...	5,42,000	5,79,000	7,75,000	8,55,000	

10. *Assessed Taxes—*

Collection of Income tax	1,79,000	1,88,000	1,82,000	1,90,000	The increase is due partly to smaller savings assumed, and partly for a provision of Rs. 3,600 for the salary of temporary peons employed in the mufassal for the realization of the arrears of Income tax.
Provincial Share (one-half)	89,000	99,000	91,000	95,000	

11. *Forest—*

A.—Conservancy and Works.					
I.—Timber and other produce removed from the Forests by Government Agency ..	7,000	11,500	.....	6,400	
II.—Timber and other produce removed from the Forests by Consumers or Purchasers .	55,000	56,200	.....	51,000	
III.—Confiscated, drift and waif wood ...	2,000	3,300	... ..	3,400	
IV.—Revenue from Forests not managed by Government	.....	.....	.....	.....	
V.—Rent of leased Forests and payments to shareholders in Forests managed by Government	... ..	.. ..	.....	...	
VI.—Livestock, Stores, Tools and Plant	12,000	12,600	.....	11,400	
VII.—Communications and Buildings	49,000	52,800	. ...	84,000	
VIII.—Demarcation, improvement and extension of Forests	23,000	36,600	. ..	31,500	
IX.—Miscellaneous	2,000	7,000	. .	3,900	
Total A—Conservancy and Works ...	1,50,000	1,80,000	.. ...	1,61,600	
B.—Establishments.					
I.—Salaries	2,10,000	2,33,000	.....	2,47,200	The estimate for 1895-96 includes provision for two new Supernumerary Assistant Conservators, 2nd grade, who have recently been posted from England.
II.—Travelling Allowances	34,000	34,200	.....	38,000	
III.—Contingencies	10,000	19,800	.....	12,200	
Total B—Establishments ...	2,54,000	2 80 000	*.....	2,97,400	* Details not communicated by the Government of India.
GRAND TOTAL OF EXPENDITURE ...	4,04,000	4,60,000	4,20,000	4,59,000	
Provincial Share (one-half)	2,02,000	2,30,000	2,10,000	2,30,000	

12. *Registration—*

Heads.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	Remarks.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Superintendence	67,000	69,000	86,000	84,000	The saving under this head is due to the appointment of lower paid officers to the offices of the Inspector-General and the Inspectors of Registration offices.
District Charges—					
Calcutta	19,000	19,492	19,000	18,792	
Special Sub-Registrars—					
Salaries, Establishment, Contingencies, and Travelling Allowance	1,44,000	1,48,508	7,34,000	1,51,208	Increase for the opening of new Sub-registry Offices and for progressive increase in the charges for Commission.
Commission	..... *	89,000		90,000	
Rural Sub-Registrars	5,59,000	4,79,000		5,09,000	
Ex-officio ditto	3,000	1,000	1,000	1,000	
Total District Charges ...	7,25,000	6,98,000	7,54,000	7,70,000	
Grand Total ...	7,86,000	7,80,000	8,10,000	8,24,000	
Provincial Share (one-half) ...	3,93,000	3,90,000	4,05,000	4,12,000	

* Included in the commission of Rural Sub-Registrars till the 31st March, 1894.

13. *Interest on Ordinary Debt—*

Interest on Provincial Advances and Loan Account	1,43,000	1,78,000	1,71,000	2,15,000	Both the revised estimate for 1894-95 and the estimate for 1895-96 are based on the estimated mean balances carrying interest at 4 per cent. per annum.

15. *Post Office—*

Conveyance of Mails, South Lushai Hills	3,000	3,000	3,000	3,000	
Establishment in Postmaster-General's and Deputy Postmaster-General's Office	5,000	5,000	5,000	5,000	
Dak Establishment at Puri and Cuttack	.....	.....	.....	2,000	The expenditure has hitherto been adjusted under the major head "2—Land Revenue, Management of Government Estates," but as the charges are now adjusted under "12—Post Office, Provincial," provision has been made here to accord with the actuals.
Total ...	8,000	8,000	8,000	10,000	

16. *General Administration—*

Salary of Lieutenant-Governor	1,17,000	1,10,000	1,03,000	1,03,000	
Staff and Household of Lieutenant-Governor ...	23,000	30,000	30,000	25,500	
Tour Expenses	35,000	34,000	34,000	34,000	
Legislative Council	24,000	26,000	26,000	25,500	
Civil Secretariats	5,58,000	5,36,000	5,66,000	5,41,000	The increase in 1894-95 is due chiefly to the absence of officers on privilege leave.
Board of Revenue	2,92,000	2,95,000	2,80,000	2,83,000	
Commissioners	5,62,000	5,79,000	6,10,000	6,11,000	
Civil Offices of Account and Audit	72,000	75,000	72,000	75,000	
Total ...	17,05,000	16,77,000	17,20,000	17,03,000	

19*A*. *Law and Justice—Courts of Law—*

HEADS.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	REMARKS.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
High Court	11,46,000	11,75,000	11,70,000	11,92,000	Increase due chiefly for Exchange Compensation Allowance.
Law Officers	3,01,000	2,93,000	2,93,000	2,97,000	
Coroner's Court	13,000	13,000	13,000	13,000	
Presidency Magistrates	63,000	65,000	65,000	65,000	
Civil and Sessions Courts	46,29,000	46,33,000	46,60,000	46,75,000	Increase due chiefly on account of Exchange Compensation Allowance and remuneration to Copyists.
Court of Small Causes	1,68,000	1,69,000	1,73,000	1,75,000	
Criminal Courts	23,49,000	23,81,000	23,81,000	24,05,000	Ditto. ditto.
Pleadership Examination Charges	8,000	8,000	10,000	10,000	
Refunds	1,41,000	1,40,000	1,30,000	1,40,000	
Total ...	88,30,000	88,76,000	88,95,000	90,32,000	

19*B*. *Law and Justice—Jails—*

Jails—					
Superintendence	61,000	56,440		58,000	
Salaries	2,42,000	2,55,275		2,60,000	
Establishments	5,000	5,615		5,735	
Warder Establishments	1,90,000	1,96,704		1,95,000	
Menial and other Establishments	8,000	7,352		9,280	
Allowances	8,000	8,300		8,500	
Supplies and Services	8,24,000	8,37,000			
Deduct petty construction and repairs ...	37,000	23,100			
Total Supplies, &c.	7,87,000	8,13,900		7,68,500	The estimate under this head depends on the number of prisoners and the price of provisions, the figures for both of which were very high in 1894-95.
Hospital Charges	77,000	80,200		82,000	
Contingencies	39,000	39,625		39,448	
				14,26,459	
Add for rounding	.....	.....		41	
Total Jails ...	14,17,000	14,63,500	14,75,000	14,26,500	
Jail Manufacture	6,20,000	7,57,400			
Deduct petty construction and repairs ...	1,000	2,000			
Total Manufactures ...	6,19,000	7,55,400	5,75,000	6,95,500	Grant for raw materials reduced with reference to the past actuals.
Petty Construction	39,000	25,100		13,000	
Do. Repairs				12,000	
GRAND TOTAL ...	20,75,000	22,44,000	20,50,000	21,47,000	

20. *Police—*

Heads.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	Remarks.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Presidency Police	7,37,000	7,30,000	7,80,000	7,47,000	Increase due to (a) Exchange Compensation Allowance, (b) rent, rates and taxes, and (c) refunds.
Municipal Police	36,000	37,000	37,000	37,000	
Superintendence	1,52,000	1,50,000	1,70,000	1,53,000	Increased provision in the revised estimate for 1894-95 is chiefly for the payment of Privilege Leave Allowances.
District Executive Force	40,30,000	42,98,000	42,75,000	43,26,000	The increase in 1895-96 as compared with the grant for 1894-95 is chiefly due to additional provision made on account of (a) increase in the number of Constables and Sub-Inspectors, (b) station charge allowance, (c) police clothing, (d) petty construction, and (e) Exchange Compensation Allowance.
Village Police	23,000	23,000	20,000	24,000	
Special Police	4,57,000	5,29,000	5,25,000	5,49,500	Increased provision made to meet charges on account of the new Military Police at Gnatong.
Railway Police	1,01,000	1,05,000	1,05,000	1,04,000	
Cattle-pounds	4,000	6,000	6,000	5,500	
Refunds	3,000	2,000	3,000	2,000	
Total ...	55,93,000	58,92,000	59,13,000	60,19,000	

21. *Marine—*

Salaries and allowance of officers and men afloat ...	60,000	68,500	68,000	69,000	
Victualling of officers and men afloat	17,000	23,000	18,000	20,000	
Purchase of Marine Stores, &c.	80,000	80,000	1,01,000	87,000	Increase in the revised estimate for 1894-95 is due to a provision of Rs. 16,000 for renewing part of the *Yacht Bhotas*.
Ditto and hire of ships and vessels	1,24,000	10,000	.....	10,000	
Pilotage and Pilot Establishment and Vessels ...	5,22,000	5,57,000	5,40,000	5,54,000	The charges under this head fluctuate and depend chiefly on the tonnage of vessels visiting the Port.
Marine Establishments	82,000	84,500	83,000	87,000	
Subsidies to Steam-boat Companies	16,000	20,000	26,000	20,000	Increase in the revised estimate for 1894-95 is due to the payment of arrear demands.
Miscellaneous	33,000	29,700	26,000	28,000	
State Yatch Establishment	7,000	5,500	7,000	5,700	
Refunds	1,000	500	.....	500	
Total ...	8,61,000	8,99,000	8,81,000	8,91,500	

22. *Education—*

Heads.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	Remarks.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Direction	63,000	70,000	76,000	74,000	The decrease in the actuals of 1893-94 is due to a lower paid officer having been appointed to act as Director of Public Instruction during the absence on leave of the permanent incumbent.
Inspection	3,55,000	3,63,000	3,70,000	3,40,000	The decrease in 1895-96 is due to the transfer of 25 Sub-Inspectors to District Boards.
Government Colleges, General	5,18,000	5,36,000	5,30,000	5,60,000	Increase due to Exchange Compensation Allowance, appointment of an additional Lecturer for the Dacca College, cost of compiling a new catalogue of Sanskrit Manuscripts, and also to increase in municipal taxes.
Government Colleges, Professional	1,23,000	1,19,000	1,18,000	1,24,000	Increase due to the appointment of a Teacher of free-hand and ornamental drawing for the Sibpur Engineering College, to the provision of the cost of Medical Establishment of the College, which was formerly shown under Civil Works and to increased provision for tools and materials and boarding charges of the College owing to an increase in the number of students.
Government Schools, General	5,39,000	5,30,000	5,45,000	5,45,000	
Government Schools, Special	1,52,000	1,49,000	1,49,000	1,52,000	
Grants-in-aid	5,73,000	6,36,000	5,75,000	6,20,000	The estimate for 1894-95 included a special regrant of savings of the preceding year.
Scholarships	1,94,000	1,93,000	1,93,000	1,94,000	
Miscellaneous	57,000	46,000	50,000	47,000	
Refunds...	6,000	4,000	4,000	6,000	
Total ...	25,72,000	26,46,000	26,10,000	26,72,000	

24. *Medical—*

Medical Establishment	6,16,000	6,28,000	6,80,000	6,91,000	The increase as compared with the estimate of 1894-95, is due chiefly to the following causes :— (*i*) Increased provision under salaries of district medical officers consequent on grade promotions, and increased payments on account of Exchange Compensation Allowance ; (*ii*) To the allowance to be granted to Clerks for doing vaccination work ; and (*iii*) To increased provision under reserve medical subordinates consequent on the increase in their number.
Hospitals and Dispensaries	4,45,000	4,26,000	4,35,000	4,32,000	The increase as compared with the estimate of 1894-95 is due to larger provision on account of expenditure for diet and clothing of patients in hospital, and also for Exchange Compensation Allowance.
Sanitation and Vaccination	2,07,000	2,12,000	2,20,000	2,24,000	
Grants for medical purposes	2,000	4,000	4,000	3,000	
Medical Schools and Colleges	2,90,000	2,75,000	2,95,000	3,03,000	The increase, as compared with the estimate of 1894-95, is due chiefly to the following causes :— (*i*) Increased provision on account of Exchange Compensation allowance to officers of the Medical College and to the provision of Rs. 5,000 to fitting up an Anatomical Museum in that College. (*ii*) To smaller deductions made under salaries of Medical Schools and to the special provision of Rs. 6,000 for models and diagrams for Medical schools.
Lunatic Asylums	1,13,000	1,14,000	1,14,000	1,18,500	
Lock-hospitals	16,000	16,000	16,000	16,000	
Chemical Examiner	24,000	23,000	23,000	24,500	Decrease is due chiefly to smaller provision made under salaries consequent on the appointment of lower paid officers.
Refunds	1,000	1,000	1,000	1,000	
Total ...	17,14,000	17,04,000	17,90,000	18,19,000	

25. *Political—*

Heads.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	Remarks.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Entertainment of Envoys and Chiefs	1,000	9,000	1,000	1,500	The estimate of 1894-95 included provision for the South Lushai Hills which has, both in the revised estimate for 1894-95 and in the estimate for 1895-96, been provided for under the head "Miscellaneous," where the charges are being adjusted.
Durbar Presents and allowances to Vakeels, &c. ...	6,000	17,000	26,000	17,000	The expenditure in 1894-95 is unusually high because articles for presentation bought in 1893-94 were paid for in the following year.
Miscellaneous	9,000	3,000	9,000	7,500	
Total ...	16,000	29,000	36,000	26,000	

26. *Scientific and other Minor Departments—*

Provincial Museums	21,000	18,200	18,000	17,000	The decrease is due to the expected absence of the Assistant Secretary on leave for a part of the year, and to his appointment remaining vacant for the period.
Imperial Institute	.....	.....	.....	500	
Donations to Scientific Societies	14,000	14,000	14,000	14,000	
Experimental Cultivation	16,000	21,500	17,000	21,500	This includes Rs. 11,000 on account of Agricultural and Rs. 10,500 on account of silk experiments.
Cinchona Plantation	1,77,000	1,75,000	1,75,000	1,93,000	The increase is due to the provision of Rs. 71,000, the last instalment of the purchase-money of the Nimtong Plantation, against Rs. 50,000, the payment during 1894-95.
Public Exhibitions and Fairs	12,000	2,000	2,000	2,000	The actuals of 1893-94 include a special payment of Rs. 10,000 for the display of Indian Tea at the Chicago Exhibition.
Veterinary and Stallion Charges	16,000	22,000	20,000	19,600	The low actuals of 1893-94 were chiefly in consequence of the appointment of officers and establishment towards the latter part of the year.
Botanical and other Public Gardens	1,16,000	1,15,000	1,15,000	1,19,000	The increase is due to grade increments.
Emigration	25,000	21,100	24,000	24,000	
Inspector of Factories	21,000	19,000	22,000	21,000	
Census	4,000	2,000	2,000	2,000	The high actuals of 1893-94 were due to charges incurred for rewriting Census Registers.
Registration of railway traffic	4,000	3,500	4,000	4,000	
Registration of river-borne traffic	18,000	18,000	18,000	18,000	
Provincial Statistics	5,000	5,200	1,000	2,200	
Miscellaneous...	.....	.....	1,000	.. ...	
Examinations	3,000	3,000	3,000	3,300	
Refunds	.....	500	1,000	....	
Total ...	4,32,000	4,42,000	4,37,000	4,61,000	

29. *Superannuation Allowances and Pensions—*

HEADS.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	REMARKS.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Superannuation and Retired Allowances	16,99,000	18,20,000	17,80,000	17,75,000	Based on actual claims taken from the registers of the Accountant-General's office. It takes into account transfers and lapses by the death of life grantees.
Compassionate Allowances	22,000	22,000	22,000	22,000	
Gratuities	19,000	8,000	8,000	8,000	The actuals of 1893-94 included a special payment of Rs. 10,000 to Lieutenant E. W. Petley as compensation for the loss of his appointment as Port Officer of Calcutta.
Total ...	17,40,000	18,50,000	17,90,000	18,05,000	

30. *Stationery and Printing—*

Stationery Office at the Presidency	1,66,000	1,69,000	1,69,000	1,67,000	The decrease is more than accounted for by the omission of all provision for hire of godowns for the storage of forms, &c., in consequence of the erection of the new Stationery Building.
Stationery purchased in the Country	60,500	70,000	68,000	70,000	
Government Presses	4,15,000	3,70,000	4,16,000	3,88,000	
Stationery supplied from Central Stores	6,11,500	7,70,000	7,70,000	7,00,000	Estimate of the Superintendent of Stationery.
Printing at Private Presses	500	.....	.....	.....	
Refunds	500	1,000	1,000	1,000	
Total ...	12,60,000	13,76,000	14,14,000	13,16,000	

32. *Miscellaneous—*

Contributions	12,000	12,900	15,000	13,000	Based on the average outlay during 1893-94 and 1894-95 for maintaining and working telegraph lines between Demagiri and Chittagong and Dumka and Rampur Hat.
Travelling allowances to Covenanted and Uncovenanted Officers attending examinations	3,000	4,000	3,000	3,000	
Rewards for proficiency in Oriental languages, and allowance to Language Examination Committee. .	9,000	6,000	7,000	8,000	
Cost of books and publications	1,000	1,000	1,000	1,000	
Donations for charitable purposes	95,000	1,00,900	1,10,000	98,000	The increase in 1894-95 represents the additional grant sanctioned for the repairs to the Alms-house, Calcutta.
Charges on account of European Vagrants	5,000	6,000	5,000	6,000	
Rewards for destruction of Wild Animals	19,000	18,000	18,000	19,000	
Petty Establishments	40,000	29,200	29,000	30,000	Decrease under Khedda Establishment owing to the reservation of the Western Duars of Jalpaiguri for the future operations of the Imperial Khedda Department.
Special Commissions of Enquiry...	.....	10,000	5,000	10,000	Provision made to meet expenditure that may occur during the year.
Rents, Rates and Taxes	68,000	24,000	34,000	34,000	The actuals of 1893-94 included a special adjustment of Rs. 39,517 paid to the descendants of Khajah Anwar Shahid of Burdwan on account of arrear charges for the maintenance of his tomb. It has been decided to treat these charges as rents instead of pensions.
Miscellaneous and unforeseen charges	13,000	11,000	9,000	12,500	
Miscellaneous Refunds	16,000	4,000	4,000	4,000	Based on actuals. The actuals of 1893-94 include Rs. 11,730, representing refunds of percentage for Treasury Establishments, excess recovered from District Funds, and District Road Funds.
Magistrates' miscellaneous contract contingencies...	.....	.....	.....	1,500	
Irrecoverable temporary loans written off	5,000	.....	5,000	4,000	
Total ...	2,86,000	2,27,000	2,45,000	2,44,000	

40. *Subsidised Companies—Land, &c.—*

Heads.	Actuals, 1893-94.	Budget Estimates, 1894-95.	Revised Estimates, 1894-95.	Estimate, 1895-96.	Remarks.
1	2	3	4	5	6
Duars Railway Land	Rs. 3,000	Rs.	Rs.	Rs.	

41. *Miscellaneous Railway Expenditure—*

Sultanpore-Bogra Railway Survey	1,000	.....	.....	.....

42. *Irrigation—Major Works (Working Expenses)—*

Orissa Canals	5,07,000	4,70,000	4,68,000	4,40,000
Midnapore Canal	2,01,000	2,80,000	2,67,000	3,12,000
Hijli Tidal ,, ...	54,000	50,000	50,000	50,000
Sone Canals	6,83,000	7,00,000	6,96,000	6,88,000
Total ...	14,55,000	14,70,000	14,67,000	14,90,000

42. *Irrigation—Major Works (Interest on Debt)—*

Orissa Canals	10,05,000	10,17,000	10,18,000	10,27,000
Midnapore Canal	3,30,000	3,30,000	3,30,000	3,30,000
Hijli Tidal ,, ...	72,000	72,000	72,000	72,000
Sone Canals	10,35,000	10,40,000	10,38,000	10,39,000
Total ..	24,42,000	24,59,000	24,58,000	24,68,000

43. *Minor Works and Navigation in charge of the Public Works Department—*

WORKS FOR WHICH CAPITAL AND REVENUE ACCOUNTS ARE KEPT.				
CAPITAL.				
Works in Progress.				
Calcutta and Eastern Canals	—424	44,000	.....	.....
Midnapore Canal	2,606	...	.....	... ..
Hijli Tidal ,, ...	—8,279	1,26,000	.....	... ..
Orissa Coast ,, ...	44,123	20,000	.....	... .
Damodar Project	—1,200	....	.....	... ...
Orissa Canals	33,579	36,000	.....	.....
Sone ,, ...	3,437	6,000	.....	. .
Total Capital ...	73,842	2,26,000	.....	.....

HEADS.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	REMARKS.
1	2	3	4	5	6
REVENUE.	Rs.	Rs.	Rs.	Rs.	
Orissa Coast Canal	95,275	71,000	.....	.....	
Calcutta and Eastern Canals	2,74,224	2,75,700	.....	.....	
Sarun Canals	6,492	20,300	.....	.....	
Total Revenue ...	3,75,991	3,67,000	.....	.....	
Total Works for which Capital and Revenue Accounts are kept.	4,49,853	5,93,000	.....	.....	
Works for which only Revenue Accounts are kept.					
WORKS IN PROGRESS.					
Nadia Rivers	1,38,436	1,22,000	.....	.....	
Gaighatta and Buxi Khals	.....	.....	.....	.....	
Total works for which only Revenue Accounts are kept.	1,38,436	1,22,000	.....	.....	
Works for which neither Capital nor Revenue Accounts are kept.					
WORKS IN PROGRESS.					
Eden Canal	50,994	1,08,000	.....	.....	
Teur Canal	8,383				
Total works for which neither Capital nor Revenue Accounts are kept.	59,377	1,08,000	.....	.....	
Total Irrigation and Navigation Works	6,47,646	8,23,000	....	.....	
AGRICULTURAL AND DRAINAGE WORKS.					
Works for which neither Capital nor Revenue Accounts are kept.					
WORKS IN PROGRESS.					
Government Embankments and Works for the Improvement of Government and escheated Estates.	8,33,429	7,49,000	.....	.....	
Midnapore Takavi Embankments under contract...					
Gandak Takavi Embankments under contract ...					
Works in charge of Civil Officers					
Total Agricultural ..	8,33,429	7,49,000	.....	.....	
GRAND TOTAL ...	14,81,075	15,72,000	* 15,50,000	* 16,22,000	*Details not yet communicated by the Government of India.

43.—*Minor Works and Navigation in Charge of Civil Officers—*

Embankments under the contract system ..	2,000	2,000	2,000	2,000	Combined establishment for the Howrah and Dankuni Drainage Schemes sanctioned by the Irrigation Department.
Maintenance charges of the Dankuni and Howrah Drainage Schemes.	.....	2,000	2,000	3,000	
Total ...	2,000	4,000	4,000	5,000	

[*Mr. Bourdillon.*]

45. *Civil Works in charge of the Public Works Department—*

Heads.	Actuals, 1893-94.	Budget Estimate, 1894-95.	Revised Estimate, 1894-95.	Estimate, 1895-96.	Remarks.
1	2	3	4	5	6
	Rs.	Rs.	Rs.	Rs.	
Original Works	10,29,000	9,25,000	.....	9,83,000	
Repairs	9,56,000	9,03,000	.....	9,47,000	
Establishment	7,11,000	7,75,334	.....	7,54,421	
Tools and Plant	10,000	31,666	.....	31,579	
Suspense	—1,30,000	.....	.....	.....	
	25,76,000	26,36,000	24,44,000	26,96,000	

45. *Civil Works in charge of Civil Officers—*

Ferries	7,000	10,000	.....	10,000	
Refunds	11,000	20,000	.....	18,000	
Contributions	47,000	50,000	.....	40,000	
South Lushai Hills	58,000	58,000	.....	68,000	
Total	1,22,000	1,38,000	2,00,000	1,36,000	The revised estimate for 1894-95 includes (1) Rs. 50,000 for Government Contribution towards the cost of land for a recreation ground for youngmen, (2) Rs. 31,000 for the improvements at Hastings, and also (3) Rs 50,000 for additions and alterations in the Sibpur Engineering College Workshops.

THE LEPERS BILL.

The Hon'ble Mr. Bourdillon moved that the Report of the Select Committee on the Bill to provide for the segregation of pauper lepers, and the control of lepers exercising certain trades, be taken into consideration in order to the settlement of the clauses of the Bill.

The Motion was put and agreed to.

The Hon'ble Mr. Bourdillon also moved that the clauses of the Bill be considered in the form recommended by the Select Committee. He said:—

"The Bill is before hon'ble members, and unless any member proposes to discuss any particular section, I understand that the procedure will be that the Bill will be passed as it stands, subject to the verbal amendment which I am about to propose."

The Motion was put and agreed to.

[*Mr. Bourdillon ; Mr. Ghose.*]

The Hon'ble MR. BOURDILLON also moved that sub-section (*2*) of section 4 of the Bill be omitted. He said:—

"On the last day that the Bill was before the Select Committee, the Hon'ble MR. LYALL drew attention to the fact that this sub-section (*2*) was mere surplusage, and was not required. The Select Committee were anxious that their Report should be submitted without delay, and they therefore allowed the sub-section to stand on an undertaking being given by myself that an enquiry would be made as to the genesis of it. The whole section 4 was adopted from section 3 of a Bill drafted by the Government of India of 1889, and I therefore referred to the Home and Legislative Departments of the Supreme Government to ascertain what the meaning of the sub-section was. It was explained that this section probably referred to certain Local Acts applying to the North-Western Provinces and Oudh only, and, as far as could be seen, it would have no application in this Province. The Secretary to this Council has verified this statement by looking through our Statute Book, and as he finds that this sub-section is without meaning in Bengal, and has no application here, I therefore move that the sub-section be omitted."

The Motion was put and agreed to.

The Hon'ble MR. BOURDILLON also moved that the Bill, as settled in Council, be passed.

The Hon'ble MR. GHOSE said:—"I wish to ask Your Honour whether there would be any objection to extend the scope of section 12 of the Bill, so that lepers engaged in certain trades and callings might be prevented from doing so, not only within municipal areas but also in rural areas? It is a matter of great importance that such persons should not be allowed to trade in articles of food or any trade or calling of the kind contemplated in the section, and I merely throw this out as a suggestion whether it would not be advisable to provide for such extension."

The Hon'ble MR. BOURDILLON said:—"I have only to say in reply that on a former occasion I declared that the policy of the Government was, that the operation of that part of the Bill which refers to lepers who are not pauper lepers should be confined to municipalities. I am somewhat at a loss to know

[*Mr. Bourdillon; the President.*]

how persons carrying on a trade or calling in places which are not municipalities are to be controlled. There will be no municipal bye-laws in such places, and I do not quite understand with what machinery my hon'ble friend proposes to carry out the provisions of these sections. In the absence of any municipal body and any bye-laws, the Magistrate will either pass executive orders which must be enforced by the Police, an expedient to which objection is sure to be taken, or the law will remain a dead-letter."

The Hon'ble THE PRESIDENT said:—"I am glad to welcome the suggetion just made by the Hon'ble MR. GHOSE as a proof that he approves the general principle which we have attempted to embody in this Bill. We have, as the Hon'ble MR. BOURDILLON has stated, confined the operation of this part of the Bill to municipal areas, but if it is found at any future time that practical measures can be suggested for extending it to rural areas, and if suitable authorities can be found who can be trusted to carry it out, it will be a fortunate thing if the Hon'ble MR. GHOSE is still a member of this Council and is able at any future time to introduce a measure of legislation in this direction. I fully recognise the desirability, on purely abstract ground, of such extension, but I agree with the Hon'ble MR. BOURDILLON that it will be impossible at the present stage of this Bill to carry out the suggestion. It is also always desirable to introduce changes of this kind in a gradual and tentative manner. We shall try it, at first in Calcutta and in other municipalities under the eyes of the public and under strict supervision, and if we find that it works satisfactorily, then there may be good grounds for extending it to rural areas; and if any portion of the procedure should require alteration, we shall have the advantage of the experience which has been here gained before extending it elsewhere.

"Turning to the general object of the Bill, which I am gratified to find has the unanimous approval of the Council, it is only necessary to say in a brief way what the procedure of the Government will be on this Bill being passed into Law and after it has received the sanction of the Governor General in Council. A site has already been selected by a Committee who took great pains and deserve our warm thanks for the trouble they took in examining a large number of sites in and around Calcutta. The site which has been selected seems to approve itself to all persons who have visited and examined

it, and who agree in pronouncing it to be a most suitable site for a Leper Asylum. The difference between the new asylum and the present one will be that the former will be a place of compulsory residence, for pauper lepers will not be allowed to leave the asylum whenever they like, whereas they are at present allowed to leave at their pleasure. The Asylum in Amherst Street was a very good one under existing arrangements and so long as it was not a compulsory place of abode for lepers, but now that we are able to secure their attendance by compulsion, we need pay less regard to the condition that the place should be one which would be popular, which would be near the markets and centres of traffic, and conveniently situated for begging. Those are the very circumstances which have led to the passing of this Bill, and the proposed site is one which lends itself with great facility to the imposing of compulsory segregation. We propose to part with the present asylum, to sell it and to use the funds obtained in this way to recoup the Government the cost of building a new asylum on the new site which has been selected. The price of the new ground will for the most part be met by the subscriptions which were raised in honour of the visit of our lamented Prince Albert Victor, which would be made over by the Committee who collected them for this purpose. We shall have to appoint Inspectors of Lepers and a Board, who will pay monthly visits and examine the asylum.

"The Board will be composed of the principal medical men of Calcutta, in whose judgment and discretion the Government and the Public will have confidence that no undue severity will be used. The treatment of lepers is a subject which is still open to very much doubt and discussion, and it will be undesirable that any measures of extreme stringency should be carried out beyond those which the majority of scientific men agree to be desirable, and which the conscience of the public will justify. I am, I believe, justified by the sense of this Council in thinking that we have in this case hit upon the happy means, and that we shall find that this Act will work well both for the benefit of the unfortunate lepers themselves as well as to the advantage of the community at large, who are in danger of contagion by the proximity of persons who suffer from this horrible disease."

The Motion was put and agreed to.

[*Sir John Lambert; Maulvi Abdul Jubbar.*]

THE CALCUTTA AND SUBURBAN POLICE ACTS, 1866, AMENDMENT BILL.

The Hon'ble SIR JOHN LAMBERT moved that the Report of the Select Committee on the Bill to further amend the Suburban Police Act, 1866, and the Calcutta Police Act, 1866, be taken into consideration in order to the settlement of the clauses of the Bill.

The Hon'ble MAULVI ABDUL JUBBAR, KHAN BAHADUR, said:—"As a member of the Select Committee I desire to make a few observations on the Bill now before the Council. It must be admitted that there exists in Calcutta the evil which the Bill proposes to deal with, and which ought to be put down by legislation. The Bill, as the Council is aware, was introduced at the instance of the Social Purity Committee, composed of gentlemen who have at heart the moral improvement of the Citizens of Calcutta, and who deserve every legislative assistance in carrying out their laudable object. No one will deny that solicitation to immorality is an act of gross misconduct, and much more so when it is done in a public place. Everybody interested in the well-being of the Society should vote for the punishment of the offence, and as far as I know there is no opposition to the offence being made punishable, but the objection is mainly against the investment of the Police with power to pounce upon such offenders. A human law is not like a law of nature that a breach of it should inevitably bring about the penalty as a matter of course. All human laws require human agency to carry them out, and Government must provide that agency. Accordingly Government has organised the Police for the execution of the Penal Laws. Therefore the Police must possess certain powers to bring offenders to justice. If the Police are not to have the limited power which section 5 of the Bill contemplates to confer on a selected few, the law will be inoperative,—a dead-letter. Immoral men and women know the people whom they should address, and naturally those accosted by them are rather amused than annoyed, but it is the innocent inhabitants and passers-by whose moral feelings are hurt by the indecent proposals made in their hearing. These persons, rather than those solicited, require the protection of the Police. I do not mean that the Police are immaculate or incapable of dragging innocent persons into Court, but if that be the reason for withholding from them the power of arrest under the

present Bill, it is equally applicable to all cases in which the Police are to be employed.

"In my humble opinion if there is any case in which the power of the Police is to be innocuous, it is the case of offence punishable under this Bill. There will be no danger to respectable women from the power of arrest given by this Bill, especially in a country where the zenana system prevails and where extreme modesty in the fair sex is the sign of respectability and good breeding. Here respectable females do not promenade the street in a manner that would render them liable to arrest. The Police have already got the power of arresting drunken men and women in the street, but I have not seen in my long experience a single case in which a respectable woman was brought up by the Police on a charge of being drunk and obstreperous. I can say that the Police seldom abuse their power in cases in which they act solely on their own responsibilty, but they are often mischievous in cases in which they are sure to be supported by false complaints and lying witnesses. If they are to exercise their power of arrest under the present Bill only on complaints it will, I am afraid, raise a crop of false and vexatious prosecutions. Disappointed lovers will not unoften wreak their vengeance upon women who may have moral strength to set their faces against improper addresses. With these remarks, Sir, I would support the Bill as amended by the Select Committee."

The Motion was put and agreed to.

The Hon'ble SIR JOHN LAMBERT also moved that the clauses of the Bill be considered in the form recommended by the Select Committee. He said:—

"It will be seen that the Select Committee have introduced one modification of importance into the Bill as originally drafted. The original Bill contemplated the punishment of mere solicitation to immorality in a public place; but it has been justly pointed out that acts of immorality such as those to which the Bill refers are not in themselves an offence under the law, and that solicitation to commit such acts ought not by itself to be made punishable. The Select Committee therefore decided to adopt the wording of the English Law in this respect, and have inserted the words 'to the annoyance of the inhabitants or passers-by,' after the word 'immorality' in sections 2 and 5 of the Bill. The Bill,

[*Sir John Lambert.*]

as it now stands, is therefore substantially identical in this part of the wording with that of the English Law on the subject, which runs as follows:—

'Every common prostitute or night-walker loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation to the annoyance of the inhabitants or passengers . . . shall be liable to a penalty of not more than forty shillings, and it shall be lawful for any Constable belonging . . to the Metropolitan Police Force to take into custody without warrant any one who shall commit any such offence within view of any such Constable.'

"The points of difference are these: First, under the English Law, imprisonment is not an alternative penalty. We have proposed imprisonment in this Bill in order to meet the case of male touts who are the chief offenders in Calcutta. Secondly, the English Law empowers any Constable to arrest, but looking to the constitution of the Police in India, we have proposed that the power of arrest should be limited to 'any Police Officer above the rank of Native Constable, and such other officer as the Local Government and the Commissioner of Police may appoint in that behalf.' Thirdly, in England, every prostitute loitering or being in any thoroughfare or public place for the purpose of solicitation is liable to arrest. The Police have no occasion to wait for any overt act of solicitation, and in this respect the Bill now before us does not go as far as the English Law. We have also inserted other safeguards to prevent abuse. The arrest is illegal if the name and address of the offender be known to the Police Officer, or can be ascertained by him then and there. I am glad to find from the letter of the REV. MR. ASHTON, who addressed the Select Committee on the subject while the Bill was under consideration, that he expressed himself, on behalf of his Committee, as satisfied that the safeguards embodied in section 5 of the Bill ought to disarm apprehension of serious abuse. I do not think I need detain the Council with any further observations regarding this Bill. I can say with confidence on behalf of the Police of Calcutta that its provisions will be administered with moderation and discretion, and I am equally sure that the sagacity and sound judgment of the Magistrates of this City will ensure that each case laid before them will be dealt with in a manner which will at once suppress the evil, and also give satisfaction to the public.

"I have once more to say to the Council that this is not a Bill which the Executive have applied for to increase its own powers; it has been brought

forward by the Government in response to an agitation on the subject by an influential section of the Calcutta Public, and the Government are satisfied that it is calculated to afford a remedy for an acknowledged evil which cannot be effectually dealt with by the law as it now stands, and they consider that no measures short of those contained in the Bill will attain the desired object."

The Hon'ble MR. GHOSE said:—"The object of the amendment which stands in my name and which I now move is to state in clear and definite terms the class of persons with whom the Police will be empowered to deal under this measure. If you retain the present wording of the Bill, I am afraid it will open a very wide and dangerous field for the operations of the Police, for in that case persons who do not belong to the classes aimed at will also be at the mercy of an unscrupulous Police Officer who may choose to say that he or she was soliciting some other person to immorality, and it will also be seen from the words of the Metropolitan Act which have been just read by the hon'ble member in charge of the Bill that my amendment is in exact conformity with English Legislation on the subject. At the time of the case of Miss Cass, which created considerable sensation, it was pointed out by the Law Journal that the section of the Metropolitan Police Act, and of every other English, Scotch and Irish Act which deals with the case of nuisances in the public streets, contains a number of clauses, all of which, with one single exception, deal with the general public; but the clause which deals with this particular subject does not refer to the general public at all, but expressly provides that action is to be taken by the Police only in the case of prostitutes and night-walkers who may be guilty of this offence. The result is that it is a condition precedent to such a charge that the person accused must be known to the Police as a prostitute or a night-walker. The law therefore as it prevails in England is not directed against all Her Majesty's female subjects, but only against those who belong to a particular class, and I submit that this Council cannot do better than follow the analogy of the law of the United Kingdom, and state in express terms the class of persons with whom you intend to deal. With that object I move that in line 7 of section 2, the words 'Any prostitute or tout who' be substituted for the word 'Whoever.' I desire to add one word by way of explanation. In the English Act we have the expression 'night-walker.' Fortunately we have here no class of persons corresponding to that term, but we have, on the

other hand, a class of persons who are in the habit of touting for prostitutes, and I therefore substitute the word 'tout' for 'night-walker;' and as I understand the main object of the Bill is to deal with such persons, I trust my amendment will be accepted."

The Hon'ble MR. COTTON said:—"I think the amendment proposed by my hon'ble friend is calculated to create some embarrassment and possibly to defeat one of the main objects with which legislation has been introduced into this Council. My hon'ble friend raised this proposal in Select Committee, and it was then considered, and the majority of the Committee were of opinion that the expression 'Whoever,' which the Bill contains, comprising all sections of the people in the most general terms, was better adapted to meet the object of the law than any definition confining it to a particular class of persons. There can be no doubt that if my hon'ble friend's amendment is accepted, any one who is prosecuted under this section will in the first instance call for proof before the Magistrate, that is to say, the burden of proof will lie on the prosecution to show that he or she is a tout or a prostitute. And although the difficulty of proving a woman who accosts a man in the street to be a prostitute is not likely to be considerable, yet in the case of touts the difficulty is likely to prove very great indeed. A Policeman may be perfectly sure that the rascal concerned is an actual tout, but when he is put to strict proof he may easily be non-plussed, and I apprehend that if the amendment is carried, the law, so far as regards touts, will become a dead-letter. The law as drafted by the Select Committee applies in general terms to all who solicit to immorality and cause thereby annoyance to the public, and although it is the case that the law when given effect to will practically apply to prostitutes and touts exclusively, there seems no objection to the general expression which is embodied in the draft Bill as it stands before you. If any other person than a tout or a prostitute should commit the offence contemplated by the Bill, I see no reason why he or she should not be punishable in the same manner as though a tout or a prostitute had committed the offence. Such cases will no doubt be exceedingly rare, but they may arise. The difficulty of proving a man or a boy to be a professional tout will be very great, and I for one am of opinion that the acceptance of the amendment will render the provisions of the Bill inoperative."

[*Sir Charles Paul; Mr. Beighton; Mr. Bonnerjee.*]

The Hon'ble SIR CHARLES PAUL said:—"I entirely support this amendment, and I am not persuaded by what has fallen from the Hon'ble MR. COTTON as to the propriety of the word 'Whoever' standing in the Bill. We are dealing with certain vices likely to be committed by certain classes of people. We have nothing to do here with the Community at large. We are dealing with the particular cases of prostitutes and touts, and I see no reason why, when dealing with such cases, we should not name them. Then, as to the question of proof, I can only say that any vigilant policeman must pretty well be aware of who the touts and prostitutes are in and about the locality where he is located, and there can be no difficulty in proving that a certain woman is a prostitute and a certain person is a well-known tout. The object is to prevent annoyance to persons of the nature of this description, and the law should be so worded as to prevent mistakes by referring to touts and prostitutes in such a manner that the object of the law will be at once known."

The Hon'ble MR. BEIGHTON said:—"I think, for very much the same reasons as those adduced by the Hon'ble MR. COTTON, that this amendment should not be accepted. The word 'tout' does not occur in the Bill nor in the English Act, on which the Bill professes to be founded, nor has it received any judicial interpretation, and I think that if that word is used, it will create many difficulties in bringing home offences. The word 'Whoever' is no doubt a sweeping word, but I cannot see why any person, whether a prostitute or a tout, or any other, should not come under the provisions of this Bill if he commits the offence against which this Bill provides. We are proposing to legislate against an offence—not merely against the classes who are most frequently guilty of the offence. There is no difficulty in understanding what the offence is, but if we define the classes to whom the Bill is to apply, there may be considerable difficulty in proving that a particular individual belongs to those classes. I think that to limit the scope of the Bill to prostitutes and touts will, to a great extent, render the provisions nugatory."

The Hon'ble MR. BONNERJEE said:—"I support this amendment. The difficulty which has been pointed out by the Hon'ble the Chief Secretary and the Hon'ble the Legal Remembrancer seems to me to have no existence at all. The word proposed to be inserted is 'tout' simply, and not the words 'professional tout'; therefore if any person on behalf of a prosti-

[*Mr. Bonnerjee; Maulvi Muhammad Yusuf.*]

tute by words or signs or gestures solicits another person to immorality, he for the time being becomes a tout for such particular prostitute, and not for prostitutes in general; therefore I do not see the difficulty of prosecuting him on a charge of touting if he commits the act described. My principal reason for supporting this amendment is this: I am not aware of any legal definition of the word 'immorality.' The section runs thus:—'Whoever in a public place solicits any person to immorality.' What is the meaning of the word 'immorality' as used there? I do no tknow of any definition of 'immorality' in the English Law books or in the Indian Acts. The dictionary meaning of the word is 'an act or practice which contravenes the Divine commands or a social duty: injustice, dishonesty, fraud, slander, profaneness, gaming, intemperance, lewdness, are immoralities.' That is the definition as given in Ogilvie's Imperial Dictionary, edition 1874; and unless you connect immorality with some other words, so as to show that you mean sexual immorality, it will be almost impossible to prevent an over-energetic Policeman, fraught with zeal in his opposition to heathenism, from arresting a person who to the annoyance of another over-energetic person solicits such person to go to Kalighat to worship at the shrine of Kali on a charge of soliciting to immorality. Take another instance of a person who in the presence of a Policeman and to the annoyance of the inhabitants in a public place addresses slanderous words with regard to somebody else. Slander is immorality, and therefore the Policeman may immediately arrest him and take him before a Magistrate and may get him fined fifty rupees, or sentenced to imprisonment for eight days. I apprehend that it is not the object of the hon'ble member in charge of the Bill to bring about such a result. You must therefore limit the meaning of the term 'solicits to immorality' by some reference to prostitutes and touts, and I think my hon'ble friend's amendment exactly meets the case; but if you leave the section as it stands, it will lead to very great abuse."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"As a member of the Select Committee who signed this Report, I submit that the arguments which have been advanced in favour of the amendment are not such as to commend the amendment to the acceptance of the Council. The arguments advanced by the hon'ble member who last spoke amount to this, that it is necessary that some words should be used in this

section which should point to the particular immorality contemplated or intended by this section. Now I submit that a fair and unbiassed reading of this section, bearing in mind the admitted scope and object of the measure, ought to lead a reasonable mind to the conclusion that the immorality referred to in section 2 is nothing but sexual immorality, and therefore I submit that it is not necessary for other words to be introduced in this section with the object of making it clear and manifest with what intention the word immorality is used. As regards the amendment itself, I submit that for the very reasons which the hon'ble mover of the amendment has assigned in favour of the amendment, that amendment should not be accepted: if the amendment is accepted, then the offender must be proved to be already a prostitute or tout, as the case may be, and the result will be that a novice or one who has just commenced to be initiated, and who has not become a full-fledged prostitute or tout, will not be liable; but I do not see why the operation of the Act should be so restricted and why there should be a period of probation and immunity. Even if the offence is committed by a person who for the first time is beginning to act as a tout, or who might not have practised prostitution before, I do not see why that offence should not be taken cognizance of under this Bill. If the main object of the amendment is to see that a Police Officer shall not be vested with powers which he might be tempted to abuse, then such object is safe, regard being had to the words which have already been added by the Select Committee. It was considered by the Select Committee that the addition of words 'to the annoyance of the inhabitants or passers-by' will afford a sufficient safeguard against abuse, and I submit that no reasonable ground exists any longer for the apprehension that the power of arrest will be used for purposes for which it is not intended."

The Hon'ble MR. SMYTH said:—"I wish to say one word in favour of the amendment. It seems to me that this Bill confers very great powers upon the Police. It is a Bill for a special purpose, and it seems to me that the amendment just provides what is required. The Bill is directed against a certain form of immorality, and the amendment proposes to limit its operation to prostitutes and touts, and I am very strongly of opinion that the Bill should not go beyond that. Personally I think we should all feel that it would be a very bad

thing if one innocent person is brought up under the provisions of the Bill, even if fifty prostitutes and touts were to escape."

The Hon'ble MR. LYALL said:—"The hon'ble mover of the amendment has based his amendment on the analogy of the English Law. But the offence which will be punishable under this Bill has nothing to do with the English Act. The offence is the overt act of solicitation, and I can see no reason whatever why a person who commits that overt act should only be punishable if he or she is first proved to be a tout or a prostitute. Under the English Act the offence is committed by a common prostitute going about the streets. No solicitation is required, and therefore the gist of the offence under the English Act is the character of the person who commits the act, but the gist of the offence under this Bill is the act committed."

The Hon'ble SIR JOHN LAMBERT said:—"The real point is whether the omission of the words proposed by the amendment is likely to cause injustice, and will their insertion act as a proper safeguard? It appears to me that no danger need be apprehended to an innocent person from the Bill as it stands. As the Hon'ble MAULVI ABDUL JUBBAR has said, he has seldom known an instance in which the Police have gone wrong in a case of this kind when left to themselves. As regards the public women the Police know perfectly well who they were, but as regards touts, although they knew who are touts, there may be some difficulty in proving it, and therefore I think it will be better to leave the Bill as it stands."

The Hon'ble THE PRESIDENT said:—"In dealing with a question of this kind where no important change of principle is involved, but where a suggestion is made to make a slight alteration in the wording with a view to avoid a possible danger or of effecting a possible improvement, I feel strongly that the Council should be bound to a great extent by the action of its Select Committee, and I say this specially with reference to what has fallen from the hon'ble member who has addressed us for the first time just now (MR. SMYTH). I feel that unless the Council reposes confidence in the Select Committee, except where very good reason is found for not supporting their action, we may find it very difficult to get hon'ble members to go through the laborious work of examining

draft Bills and of improving and correcting them as they do now in Select Committee. I think the present question is one of this kind. I do not consider that the words suggested by the amendment will be destructive of the principle of the Bill, nor do I think they will effect any considerable improvement, but the arguments used in their favour seem to me on the whole more hostile to the Bill than anything which has not been said, and which may occur to hon'ble members.

"I always feel considerable diffidence when my views are opposed to those of the Hon'ble the Advocate-General, whose long experience in this Council is unsurpassed, but I think he can hardly have noticed what the Hon'ble MAULVI MUHAMMAD YUSUF alluded to, namely that, though the amendment did not suggest the idea, the speech of the hon'ble member who moved the amendment showed that he intended it so to act as to throw considerable difficulty or considerable delay in effecting what the Council desire to effect. He considers that the effect of the amendment will be that no person could be arrested by the Police unless he had been for a long time on the streets, or a long time acting as a tout, and become personally known to the Police; that we are to treat these abominable people as if they were foxes and give them a fair run; that every one of them was to get at least a month to practise immorality, and it is only after they have been corrupting the public and our young men for some considerable time that we are to allow the Police to interfere. This shows how disastrous would be the result if the proposed amendment were to become law.

"Then, with regard to the observations which fell from the Hon'ble MR. BONNERJEE in his entertaining speech on the dictionary meaning of the word 'immorality,' I think he could hardly have intended us to take his speech seriously, because I think no member of this Council can conceive the possibility of the Police arresting any one under this Act for asking another to go to worship at Kalighat, or for uttering slander against any one in a public place. The instances he gave are so far-fetched and so ludicrous that it shows that the arguments he put before us could hardly have been intended to be seriously considered. I feel therefore bound to advise the Council not to accept the amendment which is now before us."

[*Babu Surendranath Banerjee ; Sir Charles Paul ; Mr. Cotton.*]

The Motion being put, the Council divided:—

Ayes 8.	*Noes* 9.
The Hon'ble Mr. Smyth.	The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.
The Hon'ble Mr. Womack.	The Hon'ble Mr. Beighton.
The Hon'ble Mr. Bonnerjee.	The Hon'ble Mr. Buckland.
The Hon'ble Maulvi Serajul Islam Khan Bahadur.	The Hon'ble Mr. Collier.
The Hon'ble Mr. Ghose.	The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.
The Hon'ble Babu Surendranath Banerjee.	The Hon'ble Mr. Bourdillon.
The Hon'ble Mr. Dutt.	The Hon'ble Mr. Lyall.
The Hon'ble Sir Charles Paul.	The Hon'ble Sir John Lambert.
	The Hon'ble Mr. Cotton.

So the Motion was lost.

The Hon'ble BABU SURENDRANATH BANERJEE said:—"It has been suggested to me by the Hon'ble MR. COTTON that the Government would be prepared to accept the amendment which stands in my name, subject to this modification, namely, that I should introduce the plural form as regards the words 'inhabitant or passer-by;' so that the amendment would run thus:—that in line 4 of the second paragraph of section 2, the words 'person solicited or of two or more of the inhabitants or passers-by' be substituted for the words 'inhabitants or passers-by.'"

The Hon'ble SIR CHARLES PAUL said:—"The word 'inhabitants' is rather a dangerous word to use: it means not one or two or three, but a fair number of the inhabitants. I merely throw this out for the consideration of the hon'ble member in charge of the Bill."

The Hon'ble MR. COTTON said:—"The point to which I desire to invite particular attention is, that it is the principle of the Bill that a person should be punishable, not for soliciting to the annoyance of an individual, but to the annoyance of the public; and from that point of view there is very great difference between the wording of the amendment as it was originally drafted by my hon'ble friend and that which he has been good enough to say he is

prepared to accept. I entirely concur with the remarks which fell from the Hon'ble MAULVI ABDUL JUBBAR when he dwelt with much force on the valuable provisions of the present Bill in affording protection to the public who are outraged by these solicitations. If we are to depend on the complaint of the individual solicited, or if it were necessary to prove that the person solicited had been annoyed, then I am afraid that the value of the present Bill will be minimised. It is to be assumed, as the Council were told just now, that the offenders as a rule know perfectly well the classes of persons whom they accost, and certainly in many instances the persons accosted are not annoyed, and are not likely to complain of annoyance. It is not for their protection that we have introduced this legislation. It is for the protection of the general public. From this point of view I wish to impress upon the Council the advisability of the provisions of this Bill being worded as in the English Law, where the same principle is maintained by the use of the word 'inhabitants' in the plural. There is no difficulty, I apprehend, in determining who are the inhabitants of a locality or who are the passers-by in that particular place. The custom of calling upon the Legislature to define the meaning of words is liable to great abuse. We must depend upon the Courts to exercise reasonable sagacity and commonsense in interpreting words of this nature. I understood the Hon'ble the Advocate-General to say that the word 'inhabitant' should be defined, but I am afraid there will be no end to it if questions of this kind are thrust upon us."

The Motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that in line 6 of the second paragraph of section 5, the words "on the complaint of the person annoyed or of two or more inhabitants or passers-by whose names and addresses shall be ascertained by the Police Officer" be inserted after the word "may." He said:—

"The section to which this amendment refers was the subject of considerable debate when this Bill was referred to a Select Committee. I will not repeat those arguments on the present occasion. It is not necessary to do so. I should have preferred if this section were altogether abandoned, and if solicitation to immorality were declared to be an offence, and the

[*Babu Surendranath Banerjee.*]

rest of the Bill were dropped. I am aware of the objection to this course. It has been said that if this were done the Bill would be inoperative. It would be operative when the person injured chose to complain, otherwise not. Is it not the case with regard to a large class of offences that they are not cognizable by the Police? The person injured sets in motion the machinery of the law, and the law becomes operative. We are legislating for the first time in regard to a new matter altogether, and it is of the first importance that we should so legislate that the law does not operate with severity upon the people. I would place this class of offences in the category of non-cognizable offences. I am unwilling to add to the powers of the Police, even for so laudable a purpose as the promotion of social purity; for I fear it would lead to abuse and would be used as an instrument for levying blackmail.

"I claim for my amendment that it is supported by the Association at whose instance this legislation has been undertaken. They have not left us in the dark as to their views. We have a letter from the REV. MR. ASHTON, the Convener of the Committee of the Social Purity Association. I will read the last paragraph of his letter. He there says:—

'The Committee feel the force of the remarks that have been made as to the possible working of section 5 of the Bill, but they think that section 2 will be practically inoperative without some such provision as is contained in section 5, while the safeguard imposed in that section ought to disarm the apprehension of serious abuse, especially if the section be so far modified as to make arrest lawful only at the instance of the person solicited.'

"The Committee recommend the safeguard which is embodied in my amendment. They suggest that the section be so far modified as to make arrest lawful only at the instance of the person solicited. That is the gist of my amendment. The person solicited must complain, and then only will the Police arrest. If we make this concession we satisfy the demands of public opinion, and at the same time conform to the views of the Social Purity Party. I am afraid that without some such safeguard this section will be converted into an engine of oppression, and an instrument for the purpose of levying blackmail. I am free to acknowledge that the Government is actuated in this matter by the purest of motives, and that it is entitled to command in an unstinted degree the co-operation of public opinion. My amendment seeks to bring about this result and to enlist public opinion on behalf of this measure by reconciling the interests of social purity with those of personal liberty."

[*Mr. Beighton.*]

The Hon'ble MR. BEIGHTON said:—"I desire, like the Hon'ble MR. COTTON to associate myself with much that has fallen from the Hon'ble MAULVI ABDUL JUBBAR. It is impossible not to respect the motives of those who have taken the initiative in this matter or to withhold sympathy from their conscientious efforts in the cause of morality and social purity. I will go further and admit that though the evil against which we are asked to legislate has not attained in Calcutta anything like the serious and scandalous proportions which it has reached in London and some Continental Capitals, still it is clear from what was said by the Hon'ble SIR JOHN LAMBERT when he introduced the Bill, and from the observations he has made to-day, that there are areas in Calcutta where public propriety is scandalized by open solicitations to immorality, and, to check this evil, legislation is undoubtedly demanded.

"But while I concede so much, it must not be lost sight of that the Bill not only creates in this country a new offence, but it introduces a novel procedure. Speaking very generally, the power of the Police to arrest without warrant and without complaint is restricted to heinous offences and offences against the public tranquility. The new offence defined by this Bill certainly does not come within either of those classes. It has been contended by the hon'ble member in charge of the Bill that reasonable precautions against misconduct on the part of the Police have been taken by limiting the exercise of the power conferred on the Police by the Bill to an officer 'above the rank of Police Constable.' This provision would, I suppose, allow any European Constable to take action under section 5 of the Bill. If so, it goes very far, as I shall hope to show presently, beyond the ordinary Municipal Law of England. Then, again, there is no restriction whatever as regards the rank of the 'other officer,' whom the Local Government or the Commissioner of Police may empower under the Act. This also is a point, as it appears to me, worthy of notice in considering the sufficiency of the safeguard introduced into the Bill.

"When I read the debate which took place in this Council on the occasion of the introduction of the Bill, I must confess I shared, and still share to some extent, the misgivings to which eloquent expression was given by the hon'ble mover of the present amendment and the Hon'ble MR. GHOSE. Without going so far as to anticipate the wholesale blackmailing and oppressive treatment of the poorer classes of the community, I do think that the Act may occasionally be used as a

means of extortion, and my fears on this head are by no means allayed by the arguments we have heard to-day from the Hon'ble MAULVI ABDUL JUBBAR. The hon'ble member spoke of the immunity from arrest or annoyance that the zenana system conferred upon respectable native females. But has the hon'ble member forgotten that there are other females of a humbler class, whose avocations compel them to pass through the streets of Calcutta, even at night, with perfectly innocent motives? I cannot but fear that though there may be no such widespread mischief as the Hon'ble MR. GHOSE has prophesied, there may be, if no additional safeguard be introduced into the Bill, some individual cases of extortion, and that scandals may in isolated instances occur which may reasonably shock the whole community.

"The Council will perhaps permit me to detain them while I make some observations on the law as it exists in England and in other countries. If I understood the hon'ble mover of the Bill rightly, he said in his introductory speech that the Police possessed in England the same power as it is proposed to confer upon them by this Bill, and both he and the Hon'ble MR. COTTON referred to the words of section 54, 2 and 3 Vic., Chapter 47, as the foundation for the Bill. I must confess, however, I am surprised to find that neither of the hon'ble members seem to be aware that this Act is in force only in the Metropolis. The law as regards all the other Municipal Corporations in England is contained in the 'Towns Clauses Consolidation Act,' section 28 of which renders punishable every common prostitute or night-walker loitering and importuning passengers for the purposes of prostitution. This Act, however, contains no provision as to how the law is to be enforced, but merely defines the offence. That provision is to be found in section 253 of the Public Health Act of 1878; and not to detain the Council by unnecessary reference to technical details, I may say at once that no cognizance can be taken by the Police of the offence defined, nor can they arrest or prosecute any offender except on the complaint of some person aggrieved. This is the law as regards ordinary municipal boroughs in England, and it is well that the Council should note that we are proposing to confer upon the Police of Calcutta exceptional powers which exist in England only for the government of the Metropolis. Even in the Metropolis it is a matter of common notoriety that a Police Magistrate will not convict on the uncorroborated evidence of a Police Constable. The case of Miss Cass, which has been so often referred to,

is not an illustration of the imperfection of the law as it stands, but rather a proof of its inadequacy to prevent an occasional instance of oppression and a forcible example of the mode in which an unscrupulous Police Constable may, under colour of the law, act in defiance of its provisions.

"The law in other countries, so far as I have been able to ascertain, is very much the same as in the municipal boroughs of England. In America all or nearly all the State Legislatures have enacted that no police officer can arrest, and no complaint can be entertained in the Police Courts except at the instance of some one who has been aggrieved and who publicly comes forward to state that he has been aggrieved. In Germany the law is the same, while in Italy the power of interference is still more restricted. No police officer has the right to arrest any person for soliciting to immorality whether a complaint is made or not. The person aggrieved must himself lodge a complaint before a Magistrate. An attempt to legislate for the towns of Rome and Naples on something like the lines of the present Bill was defeated in the Chamber of Deputies.

"This summary, brief as it is, is, I trust, sufficient to show the Council that any powers conferred upon the Police to interfere in cases of solicitation are regarded throughout the civilised world with great distrust. But while I am bound to say that I cannot vote for section 5 of the Bill as it is drafted, I do not think the Council ought to accept the amendment now under discussion.

"I entirely concur with what has been urged by the Hon'ble the Chief Secretary and the Hon'ble SIR JOHN LAMBERT, both to-day and during the former debate, that if the person solicited or any other person is to be compelled to give his name and address before any complaint as to solicitation can be recognized by the Police, the provisions of the Act will be rendered altogether nugatory. The publicity attending such a provision would practically deter either the person solicited or any member of the public who was present from coming forward and complaining of any solicitation either addressed to him or which took place in his presence. But this is a very different thing from saying that no complaint ought to be made. We have been told several times in this Council that the Bill is framed in the interests of the public. If so, it is surely not too much to expect that some individual will come forward in the interests of the public and make a complaint. I think that a passer-by who

might well shrink from giving his name and address need not shrink from putting the machinery of the Bill in motion and claiming the protection of the Police when there is no such ordeal to be faced. It may be argued by those who support the more drastic proposal of the hon'ble member that my suggestion would not be a sufficient precaution against extortion. I do not share this apprehension. It would be perfectly well-known both to the police and the public that the former could not act otherwise than on complaint of some kind, even if it be a complaint of an unknown person, and this would in practice operate as a check on malpractices. The Police would be unable to levy blackmail from prostitutes and their servants without a conspiracy which would require at least one confederate, and this would greatly increase the chances of detection; and if any attempt were habitually made by any police officer to secure convictions under this section by falsely alleging that a complaint had been made by some one unknown to him, he would, after a short time, infallibly be detected by his superior officers, and no Magistrate would attach any credence to his evidence.

"I have one more observation to make as to one of the safeguards in the Bill on which stress has been laid by the hon'ble member opposite (MR. COTTON). The provision for limiting the power of arrest to cases where the offender refuses to give his name and address appears to me illusory, for there is nothing to prevent a dishonest police officer from asserting that the offender refused to give these particulars, whether he did so or not.

"I have been precluded, owing to my very recent appointment as a member of this Council, from giving the usual notice, but I have drafted an amendment to-day which will, I hope, meet with the approval of the Council, and have handed it to His Honour the President. If he permits me to do so, I will move at the proper time that after the word 'may' in the sixth line of paragraph 2 of section 5, the words 'at the instance of any person aggrieved' be inserted. The 'person aggrieved' may be either the person solicited, or any member of the public, who was present and was annoyed by the act of solicitation. This is, after all, a small amendment, but I hope the Council, and even the Hon'ble BABU SURENDRANATH BANERJEE, will accept it as sufficient to meet the fears that have been expressed as to the effect of the exceptional powers conferred upon the Police."

[*Mr. Cotton.*]

The Hon'ble MR. COTTON said:—"I venture to trouble the Council with a few words with reference to the proposal of the Hon'ble BABU SURENDRANATH BANERJEE, and also with regard to the remarks of the Hon'ble MR. BRIGHTON. I must say that certain of these observations seem to me calculated to mislead the Council as to the powers already exercised by the police in this town. If I understand my hon'ble friend correctly, he laid down the law to be that only in cases of heinous offences and with regard to public disturbances had the police power to arrest without warrant. It appears to me that my hon'ble friend entirely lost sight of a very large number of offences with regard to what are termed nuisances, which are tried by Magistrates. All matters which relate to Public Nuisances are cognisable by the police. The police may arrest persons committing such nuisances without warrant. The Calcutta Police Act enumerates in section 66 a vast number of offences of that nature, the essence of which is that they cause public annoyance; in other words, that they are nuisances. There is a special section which empowers the police to arrest without warrant persons found drunk or incapable of taking care of themselves, or are guilty of rioting in the streets. Amongst other offences are included the exposing of one's person, exposing sores and wounds, and begging: all these are substantive offences, for which the police can arrest without warrant. The point is this, that any police officer may arrest in the case of such offences without warrant; and it was originally proposed by the Hon'ble BABU SURENDRANATH BANERJEE that the same power of arresting without warrant should be extended to the new offence now created; in other words, that it should be an offence for which any police officer may arrest without a warrant. [The Hon'ble BABU SURENDRANATH BANERJEE said:—"My hon'ble friend will pardon me. I made that statement at a time when I was not aware that the offence was an offence cognisable by the Police."] But as a matter of fact all these offences are cognisable by any police officer, and it was proposed by the Social Purity Association that the offence of solicitation should be added to the offences enumerated in this section of the Calcutta Police Act. That was a step beyond what the Government was prepared to take. There is no doubt that this is a new offence,—this solicitation to commit immorality to the annoyance of the public,—and the Government are most anxious that a new offence of this kind should be safeguarded in such a way as to ensure that the public should be protected.

[*Mr. Cotton.*]

"With this view various safeguards were proposed, one of which was that the power of arrest should be restricted to a police officer above the rank of native constable, and to police officers specially appointed by the Lieutenant-Governor or the Commissioner of Police, and other safeguards were added. I lay much stress on this consideration, as I think it cuts at the root of the objection which my hon'ble friend takes to allowing these powers to be exercised by the police. The English Metropolitan Law places this power in the hands of any constable of police. We have not done that. I wish hon'ble members carefully to consider that point. The Government has been most anxious that powers conferred upon the police should not be abused, and I think the Council may accept the assurance of the Hon'ble SIR JOHN LAMBERT that the discretion vested in the police will be judiciously exercised.

"Then, as to the proposal contained in the amendment that cases of this kind should only be taken up on complaint—a proposal which is substantially endorsed by the Hon'ble MR. BRIGHTON when he recommends that cases shall only be brought at the instance of the party aggrieved. I object as strongly to one amendment as to the other. The object of the law is to create an offence which is an offence against the public, not an offence against an individual. This offence comes in the same category as all public nuisances which have designedly been made cognizable by the police, and for which they can arrest without warrant; and as this new offence classes itself in the category of public nuisances, it is legitimately and properly an offence for which the police may arrest without warrant. There is no harm in any one complaining. If an individual is annoyed he can complain; but the police will act as guardians of the public welfare under this law. The public is aggrieved by solicitation, but individual members of the public will not complain in such cases. I cannot imagine myself in the position of a complainant in such a case, and I should be very much surprised if any hon'ble member would go so far as to complain to the police or to a Magistrate of an offence under this section. I think we should leave the power of acting in cases of nuisances of this kind in the hands of the police, who are the custodians of the public welfare. We know from experience that individuals will not complain. It is not the case in Calcutta only, but all the world over, that the person solicited is probably the very last person who will complain. I hope, gentlemen, you will vote against this amendment."

[*Sir Charles Paul; Maulvi Muhammad Yusuf.*]

The Hon'ble SIR CHARLES PAUL said:—"I do not understand my hon'ble friend, the Legal Remembrancer, to have desired that an arrest should not be made without warrant, but he desired simply that the arrest should be at the instance of the person aggrieved, in order to prevent any Policeman taking malicious or capricious action under this section. My mind has vacillated between the two questions whether there should be a complaint or not; but on the whole I have come to the conclusion that it would be better to have a complaint, and what has convinced me is the second portion of the amendment, of which notice has been given by the Hon'ble MR. GHOSE, namely, that the Magistrate may, when he finds it necessary, require the complainant to appear and give evidence. The Hon'ble MR. COTTON has suggested that the offence with which this Bill deals is an offence which comes under the category of a Public Nuisance; that the Policeman is the guardian of the public welfare. I never knew that before, but we live and learn. He is a gentleman, no doubt, who is employed to keep the peace and to do other things, but I never knew that he was the custodian of the public welfare. Any one of the public should be at liberty to set the Police in motion, but he should not be bound to come forward and give evidence. The advantage of this course will be that it will put an end to the possibility of a Policeman acting capriciously or maliciously."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"When this Bill was being referred to the Select Committee, I suggested that the words 'on complaint' might be introduced in this section, but in the Select Committee certain modifications were made which rendered it unnecessary that the words 'on complaint' should be introduced. The Bill as it stood before afforded every facility for abuse of its powers by the Police, but the words which the Select Committee introduced provided sufficient safeguard against such abuse: the words which the Select Committee introduced were that the solicitation must be 'to the annoyance of the inhabitants or passers-by.' After the introduction of these words it is unnecessary that there should be a complaint. The section having been thus amended, and for the exercise of the power of arrest it being necessary that the names and addresses of the inhabitants should be known, no urgency exists for a complaint. I shall therefore vote against this amendment."

[*Maulvi Serajul Islam; Mr. Bonnerjee; the President.*]

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, said:—"The object of this amendment is to prevent a Police Officer arresting a person of his own motion in such a case. By this Bill you are creating a new offence, and are giving additional powers to the Police, and therefore it is essentially necessary that there should be some safeguard. I do not think the safeguard provided by section 5 is quite sufficient; and if that is so, I submit that the Police ought not to take any action unless on the complaint of the person who has been solicited or of the inhabitants or passers-by. If the gist of the offence is the annoyance caused, how is the Police Officer to know that annoyance has been caused unless there is a complaint? The complaint would be the test of the annoyance; and therefore I humbly think that the addition of the words proposed in this amendment are very necessary. It was said by the Hon'ble MR. COTTON that the object of the law is to provide a remedy against a public nuisance. If that is so, what is the test that the conduct of a certain person amounts to a public nuisance? It is a complaint, and unless there is a complaint, it cannot be said that there is any offence at all."

The Hon'ble MR. BONNERJEE said:—"I also support this amendment, and the reason which has been given by the hon'ble gentleman, who has just spoken, is so conclusive that I do not think it necessary to adduce any other reason. I rise chiefly to enter my respectful protest against English Law and English Statutes being brought to bear upon the consideration of policy in this Council when those Statutes and those Laws are of a character which take away from the liberty of the subject; when it is urged on behalf of the people of this Country that such and such institutions exist in England, the answer given on behalf of the Government is that the condition of things in England differs entirely from those in India, and therefore you cannot have English institutions given to you. If we are not to have English institutions favouring the liberty of the subject, do not let us have English institutions which do not favour the liberty of the subject."

The Hon'ble THE PRESIDENT said:—"The reasons against requiring the person aggrieved to make a formal complaint have been fully stated on various occasions, and have been stated again on this occasion. I cannot say that anything that has been said has materially altered my view or has led me to think

[*The President; Mr. Beighton.*]

that there should be a complaint. The object in view is to stop the commission of the offence, but we shall weaken the measures taken to stop it if we require a complaint. I do not feel the same objection to the amendment about to be proposed by the Hon'ble MR. BEIGHTON, namely, that the Police Officer should act at the instance of the person aggrieved. Practically, we know that something of the kind does take place: the Police will not act unless moved by some person who is aggrieved."

The Motion being put, the Council divided:—

Ayes 7.	*Noes* 9.
The Hon'ble Mr. Smyth.	The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.
The Hon'ble Mr. Womack.	The Hon'ble Mr. Dutt.
The Hon'ble Mr. Bonnerjee.	The Hon'ble Mr. Beighton.
The Hon'ble Maulvi Serajul Islam Khan Bahadur.	The Hon'ble Mr. Buckland.
The Hon'ble Maharaja Sir Luchmessur Singh Bahadur of Darbhanga.	The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.
The Hon'ble Mr. Ghose.	The Hon'ble Mr. Bourdillon.
The Hon'ble Babu Surendranath Bauerjee.	The Hon'ble Mr. Lyall.
	The Hon'ble Sir John Lambert.
	The Hon'ble Mr. Cotton.

So the Motion was lost.

The Hon'ble MR. BEIGHTON said:—"I have already detained the Council for so long a time with the arguments on which my amendment is based that I do not intend to inflict another speech upon them. I have to thank the Hon'ble MAULVI SERAJUL ISLAM for an argument which strengthens the reasons for my amendment, and that is the doubt which the Police must feel in ascertaining whether any annoyance has been caused unless some complaint has been made. I have expressly used the word 'instance' instead of the formal word 'complaint' in order that it should be understood that the person making the complaint is not bound to appear and give evidence. I move that in line 6 of the second paragraph of section 5, the words 'at the instance of any person aggrieved' be inserted after the word 'may.'"

[*Mr. Cotton; Sir John Lambert.*]

The Hon'ble MR. COTTON said:—"The objections I took to the Hon'ble BABU SURENDRANATH BANERJEE'S motion apply with equal force to this amendment. In fact, I feel that there is no radical distinction between the two amendments: the difference is the difference between tweedledum and tweedledee! There is no difference between a provision in the law authorising action to be taken by the police on a complaint made and action taken by the police at the 'instance' of the person aggrieved,—whether it is called a complaint, a statement, or a representation I do not care,—but the fact remains that in either case the police will not be able to take action unless some person comes forward and makes a representation to them. I understand from the observation that Your Honour dropped a minute ago, that you are of opinion that the police would not act except at the instance of some person who might be aggrieved. With due deference to that opinion, which I do not hold, I would refer to cases of public nuisances in which the police do act on their own authority; in the case, for instance, of a carriage driven on the wrong side of the road or without lights, in such cases the police take up the driver. There is no complaint; the police do not act at the instance of a person aggrieved; they act on general instructions given to them. Again, when a person is drunk and disorderly in a public place, the passers-by do not say 'arrest that person,' but the police arrest him of their own accord. Any police officer may arrest in such cases. In this particular instance, which creates a scandal to the community, it is also proposed that the police shall act on their own authority; but a safeguard is enacted, only the higher officers of police shall be so empowered. To suppose that members of the public will come forward to complain is chimerical, and if this amendment is carried, the law had better not be passed at all."

The Hon'ble SIR JOHN LAMBERT said:—"I entirely agree with what has fallen from the Hon'ble MR. COTTON. It will be useful, I think, for the Council to know what generally takes place in such cases. I have been in Calcutta, in the appointment which I have the honour to hold, for a long time, and I can say that, as a rule, complaint is made not to the subordinate Police but direct to the Commissioner of Police. It is made by persons of respectability, and the complaint is that in a certain locality an annoyance of the kind referred to is caused, and the Commissioner of Police is asked to take such steps as will enable the residents to get relief. The Commissioner then places a selected officer in the locality, and instructs him to take steps to stop the nuisance. That

[*Sir John Lambert; the President.*]

is what generally happens. But if the Police on duty in the street are to wait until they are called upon by individuals, or by the residents of the locality, or by persons aggrieved, to make arrests, then this Act will assuredly be a dead-letter, and it had far better be withdrawn."

The Hon'ble THE PRESIDENT said:—"I trust that the prophecy of the Hon'ble SIR JOHN LAMBERT will not be found to be a truthful one, supposing this amendment to be carried. It must be observed that even the chief supporters of the Social Purity Association, at whose instance mainly the Government has moved in this matter, have supported an idea of this kind, and I confess, in spite of what has been said, that I think the proper and reasonable procedure is that the persons aggrieved should make the first move in the matter, and I am inclined to think they would call in the Police to stop annoyances of the sort, provided it would not result in their having to make an appearance before the Magistrate at some future date. Even granting that this Act becomes a dead-letter, there will be later opportunities for the Council to enlarge the powers given to the Police. If we find that what we have done is insufficient, we can do something more. But in all cases of this kind it seems desirable to step moderately, and not to rush into a new departure. On these grounds, after hearing all that has been said, my personal feeling is in favour of the amendment of the Hon'ble MR. BEIGHTON."

The Motion being put, the Council divided:—

Ayes 12.

The Hon'ble Mr. Smyth.
The Hon'ble Mr. Womack.
The Hon'ble Mr. Bonnerjee.
The Hon'ble Maulvi Serajul Islam Khan Bahadur.
The Hon'ble Maharaja Sir Luchmessur Singh Bahadur of Darbhanga.
The Hon'ble Mr. Ghose.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Mr. Dutt.
The Hon'ble Mr. Beighton.
The Hon'ble Mr. Buckland.
The Hon'ble Mr. Collier.
The Hon'ble Sir Charles Paul.

Noes 6.

The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.
The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.
The Hon'ble Mr. Bourdillon.
The Hon'ble Mr. Lyall.
The Hon'ble Sir John Lambert.
The Hon'ble Mr. Cotton.

So the Motion was carried.

[*Babu Surendranath Banerjee; Mr. Cotton; Mr. Ghose.*]

The Hon'ble BABU SURENDRANATH BANERJEE moved that in line 9 of the second paragraph of section 5, the words "person solicited or of two or more of the inhabitants or passers-by" be substituted for the words "inhabitants or passers-by." He said:—

"This amendment is the same as that which has been accepted by this Council on my motion in reference to section 4."

The Hon'ble MR. COTTON said:—"I cannot agree to this amendment, and would wish my name to appear as opposed to it. I believe it will prove to be an injurious provision in the law."

The Motion was put and agreed to.

The Hon'ble MR. GHOSE said:—"I think it necessary to bring forward the motion which stands in my name for reasons which I shall state. On the last occasion when this Bill was before the Council, several hon'ble members agreed with me as to the dangerous character of the powers which were proposed to be conferred on the Police, and I have not heard anything in the Select Committee or in the debates which have taken place to-day which induces me to alter my opinion. On the contrary, the more I have reflected and the more I have discussed the matter with my friends, the more fully am I convinced that it will be dangerous to pass this Act without some more efficient safeguards than are provided in the Bill. No doubt the amendments which have just been carried go to a certain extent to meet the object I have in view, but there is one matter which has been overlooked. A Police Officer is bound to take action at the instance of some person or persons aggrieved, but unless you also compel him to ascertain the name and address of the persons making complaint, you leave us exactly where we are, because we shall have nothing more than the bare statement of the Policeman that some persons complained to him, but he did not know who they were or where to find them. It is absolutely necessary that where a false case is brought against an innocent woman, the Police Officer should be able to disclose the name and address of the person who set the law in motion. The object of my amendment is not, that in every case or in the majority of cases the person or persons who complained should be compelled to give evidence in Court.

"In the vast majority of cases where the offence is committed in the public streets, the persons charged will either be prostitutes or touts; there will be no

dispute in such cases; the persons charged will admit the offence, and the whole thing will be over in a minute. But my amendment is intended to meet the case where the woman denies the charge, and where she is able to prove to the satisfaction of the trying Magistrate that she is not a prostitute, but a respectable person. In such cases the Court should have the power to compel the person who is responsible for a malicious and false prosecution to come forward and give evidence. I submit that this is still necessary; otherwise you would leave such innocent persons without any remedy whatever. This class of cases may be very rare, but such cases may occur, and I think a safeguard should be provided to meet them. I still hold that there is no necessity whatever for this legislation, and I respectfully advise some of those who are agitating in this direction to look homewards and to direct their exuberant energies towards the purification of Regent Street and Piccadilly, and a hundred other important thoroughfares in London and in every other large European City compared with which our streets may be regarded as models of purity. However, be that as it may, I submit that if we do pass an enactment such as this, the amendment which I now propose should be accepted, as it will tend to some extent at least to minimise the dangers and the evils which I apprehend. With these remarks, I move that at the end of section 5 the following provisos be added:—

'Provided that it shall be the duty of every Police Officer taking action under this section to ascertain the name and address of the person aggrieved:

'Provided, further, that the person aggrieved need not attend to give evidence unless required by the Magistrate so to do.'

The Hon'ble MR. COTTON said:—"I most strongly oppose this, as I have done all previous amendments in the same direction. It strikes at the very principle of the Bill, which is to provide for certain offences against the public and not against individuals. A clause of this kind will stultify the Bill, and I hope the Council will not pass this amendment."

The Hon'ble MR. BEIGHTON said:—"I think, for the reasons I have already fully placed before the Council, that this amendment ought not to be accepted. I may observe with regard to the second of the two provisos, the Magistrate already has the power, under the ordinary law, of summoning any person to give evidence in any case before him, and I can see no possible object in passing a provision which is redundant and merely draws unnecessary attention

[*Mr. Beighton; Sir John Lambert; the President.*]

to the powers conferred upon all Courts of Law. I am by no means sure that the proviso will not have the opposite effect to that contemplated by the hon'ble member."

The Hon'ble SIR JOHN LAMBERT said:—"I am afraid that these provisos will not help us. The state of the Law will very soon be known, and all that the person charged will have to do will be to deny that he or she committed the offence, and request that the person or persons at whose instance the arrest was made be produced, and it will invariably happen that the person who has given his name to the Police will be summoned by the Magistrate to give evidence. As soon as this is known, the law will become inoperative, and there will certainly be no possibility of oppression or illegal conduct on the part of the Police, for the simple reason that they will cease to act at all."

The Hon'ble THE PRESIDENT said:—"My objection to this amendment is, that I fear it will make the law very largely inoperative. Persons aggrieved, will prefer to undergo the annoyance rather than face the trouble and annoyance of appearing in the Police Court; and this will especially be the case with ladies who are ignorant of the nature of a Police Court, and who would naturally object to appear in such cases. I think it will be extremely unwise to make it impossible for people to rid themselves of the annoyance which they suffer. I trust all who desire the success of this Bill, and to support the action of the Government in bringing it forward, will vote against this amendment."

The Motion being put, the Council divided:—

Ayes 7.

The Hon'ble Mr. Smyth.
The Hon'ble Mr. Womack.
The Hon'ble Mr. Bonnerjee.
The Hon'ble Maharaja Sir Luchmessur Singh Bahadur of Darbhanga.
The Hon'ble Mr. Ghose.
The Hon'ble Babu Surendranath Banerjee.
The Hon'ble Sir Charles Paul.

Noes 9.

The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.
The Hon'ble Maulvi Serajul Islam Khan Bahadur.
The Hon'ble Mr. Beighton.
The Hon'ble Mr. Buckland.
The Hon'ble Maulvi Abdul Jubbar Khan Bahadur.
The Hon'ble Mr. Bourdillon.
The Hon'ble Mr. Lyall.
The Hon'ble Sir John Lambert.
The Hon'ble Mr. Cotton.

So the Motion was lost.

[*Sir John Lambert; Mr. Buckland.*]

The Hon'ble SIR JOHN LAMBERT moved that the Bill, as settled in Council, be passed. He said:—

"The Bill has been very materially altered, and I trust it will be found to work, but I am very doubtful whether it will have the effect which is desired."

The Motion was put and agreed to.

THE LAND RECORDS MAINTENANCE BILL.

The Hon'ble MR. BUCKLAND moved that the Hon'ble MR. BEIGHTON be appointed to the Select Committee on the Bill to provide for the maintenance of Records of Rights in Bengal, and for the recovery of the cost of Cadastral Surveys and Settlements in the place of the Hon'ble MR. WILKINS.

The Motion was put and agreed to.

The Council adjourned to Saturday, the 30th instant.

CALCUTTA;
The 26th April, 1895.

GORDON LEITH,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Bgl. No. 763—300—29-4-95.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 *and* 1892.

The Council met at the Council Chamber on Saturday, the 30th March, 1895.

Present:

The Hon'ble Sir Charles Alfred Elliott, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.

The Hon'ble H. J. S. Cotton, C.S.I.

The Hon'ble Sir John Lambert, K.C.I.E.

The Hon'ble D. R. Lyall, C.S.I.

The Hon'ble J. A. Bourdillon.

The Hon'ble F. R. S. Collier.

The Hon'ble C. E. Buckland.

The Hon'ble T. D. Beighton.

The Hon'ble R. C. Dutt, C.I.E.

The Hon'ble Surendranath Banerjee.

The Hon'ble L. Ghose.

The Hon'ble Maulvi Serajul Islam Khan Bahadur.

The Hon'ble W. C. Bonnerjee.

The Hon'ble J. G. Womack.

The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.

The Hon'ble C. E. Smyth.

THE BENGAL PROVINCIAL SERVICE BUDGET FOR 1895-96.

The Hon'ble Mr. Bourdillon moved for the discussion of the Bengal Provincial Service Budget for 1895-96.

The Motion was put and agreed to.

EXCISE REVENUE.

The Hon'ble Babu Surendranath Banerjee asked:—

The Excise Revenue shows an increase in the revised estimates for 1894-95, and in the budget estimates for 1895-96. The receipts from license and distillery fees and duties for the sale of liquors and drugs amounted to

[*Babu Surendranath Banerjee; Mr. Bourdillon.*]

Rs. 94,90,000 in the revised estimates for 1894-95, showing an increase of Rs. 3,55,000 over the actuals of 1893-94. Will the Government be pleased to state how much of this increase is due to Outstills? Will the Government be pleased to state the number of Outstills in 1893-94 and the number in 1894-95, district by district, if practicable?

The Hon'ble MR. BOURDILLON replied:—

"The information asked for cannot now be furnished. The receipts from Outstills in 1893-94 can be given separately, but those for 1894-95 cannot be shown, as the year has not closed. In framing revised estimates, separate estimates are not prepared of receipts under the different heads, so that it is impossible now to give details of the estimated total of Rs. 94,90,000 in 1894-95.

"The number of Outstills in 1893-94 was 2,034; the number actually open in 1894-95 is not yet known to Government. The distribution of Outstills by districts will be found in Table V appended to the Board's Excise Administration Report for 1893-94, to which I beg to refer the Hon'ble Member."

OPERATION OF THE OUTSTILL SYSTEM.

The Hon'ble BABU SURENDRANATH BANERJEE asked:—

Whether the Outstill system, which was condemned by Parliament some years ago and abolished in most parts of Bengal, has been reintroduced in some parts of some districts within the last three years; whether a proposal to reintroduce that system into some parts of the Bankura district is now before the Board of Revenue or the Government of Bengal; and whether, in consideration of the general condemnation of the Outstill system by the public and by the House of Commons, the Local Government has considered it necessary, or will consider it necessary, in future, to consult local opinion, or public bodies representing public opinion, before reintroducing the Outstill system into any part of any district where it has once been abolished?

The Hon'ble MR. BOURDILLON replied:—

"During the last three years Outstills have been reintroduced in part of one district only, viz., Cuttack, where in 1893 six Outstills were sanctioned in a jungly part of the district remote from the Sadar distillery and bordering on the Gurjat frontier.

[*Mr. Bourdillon; Babu Surendranath Banerjee.*]

"A proposal was made to Government to reintroduce the Outstill system into certain sparsely populated tracts of the Bankura district, but the Lieutenant-Governor has already negatived the proposal. The Government of Bengal is always careful to ascertain the bent of local feeling and all the circumstances of the locality before introducing a change of the kind described; but in jungly localities, such as those referred to as being tracts to which the Outstill system is suitable, it can hardly be said that public feeling exists."

RECEIPTS FROM COURTS OF LAW AND STAMPS.

The Hon'ble Babu Surendranath Banerjee asked:—

The receipts from Courts of Law have been estimated at Rs. 8,90,000; the expenditure under the same head is estimated at Rs. 90,32,000. The receipts from Stamps are estimated at Rs. 1,25,25,000. Three-fourths of this sum are credited to the Provincial Funds. If the Stamp Revenue were credited to the Courts of Law, there would be a surplus balance. This, however, is not done; the deficit in connection with the Courts of Law is met from the general revenues of the province. Will the Government consent to credit the receipts under Stamps to Courts of Law, and devote a reasonable percentage of the surplus balance to the improvement of the Courts of Law by adding to the number of Munsifs, raising the pay of the ministerial establishment, and by such other means as to the Government may seem fit?

The Hon'ble Mr. Bourdillon replied:—

"The Lieutenant-Governor is unable to give any such assurance as that asked for. All Provincial Receipts are credited to the Provincial Funds from which expenditure is sanctioned under the various heads according to the requirements and the relative importance of each. The theory that certain items of Revenue should be set apart and hypothecated to certain items of outlay cuts at the root of Provincial Finance, and would render it absolutely unworkable. It is difficult as it is in most years to make revenue and expenditure balance each other, and it would be impossible, or intolerably inconvenient even if possible, to make an innumerable number of sub-heads balance each other, and to earmark every item of revenue as applicable only to the corresponding item of expenditure."

IRRIGATION WORKS.

The Hon'ble BABU SURENDRANATH BANERJEE asked:—

The working expenses under "Irrigation" show a steady tendency to increase. The working expenses were Rs. 14,55,000 in 1893-94; in 1894-95 they were Rs. 14,67,000; for 1895-96 they have been estimated at Rs. 14,90,000. Further, the receipts from Irrigation under all heads show a steady decrease. The actuals for 1893-94 were Rs. 25,45,000, the revised estimate for 1894-95 was Rs. 23,43,000, which is Rs. 88,000 less than the budget estimate for the same year, and the budget estimate for 1895-96 has been fixed at Rs. 23,86,000. Explanation is solicited as to the increase in the working charges and the decrease in the receipts under this head?

The Hon'ble MR. BOURDILLON replied:—

"The estimated increase in working expenses during 1894-95 and 1895-96 is due to the heavy cost which has been, and will be, incurred in making good the damage done to the Midnapore Canal by the cyclone of May, 1893.

"The estimated falling off in the receipts is due to the fact that the figures of 1893-94 were abnormally inflated by larger traffic in the Orissa Canals and by the recovery of old arrears in the Midnapore Canal. These facts have already been stated in the last sentence of paragraph 4 of my Explanatory Note."

SALE OF QUININE BY POSTAL PEONS.

The Hon'ble BABU SURENDRANATH BANERJEE asked:—

The receipts from Cinchona Plantation have been estimated for 1895-96 at Rs. 1,45,000, which represents an increase of Rs. 20,000 over the actuals of 1894-95. The explanation given is "Increase anticipated in consequence of the more extensive sale of Quinine in pice-packets." Will the Government be pleased to take into consideration a suggestion which has been made to facilitate the more extensive sale of Quinine, viz., that postal peons distributing letters should be furnished with the packets for sale?

The Hon'ble MR. BOURDILLON replied:—

"The suggestion that postal peons distributing letters should be entrusted with packets of Quinine for sale is not thought to be likely to lead to success.

It would entail an amount of account-keeping and pecuniary responsibility on the part of the postal peons to which the Post Office Department would probably object. The Lieutenant-Governor is anxious to extend the sources of supply by utilising other means besides those of the Post Offices, such as isolated shops, railway stations, &c., but he does not consider that it would be desirable to entrust the packets, which are easily injured by damp, to the care of itinerating peons."

VETERINARY RECEIPTS.

The Hon'ble BABU SURENDRANATH BANERJEE asked:—

A sum of Rs. 5,000 is estimated under "Veterinary Receipts." A sum of Rs. 1,47,000 is estimated under "Miscellaneous" under Head XXV (Miscellaneous). Will the Government be pleased to give some details as to these items?

The Hon'ble MR. BOURDILLON replied:—

"The estimate of Rs. 5,000 under 'Veterinary Receipts' represents, in round numbers, the total payments expected on account of horses and horned cattle to be treated at the Veterinary Institution, Belgachia, during 1895-96.

"The principal items in the total of Rs. 1,47,000 estimated under 'Miscellaneous' receipts are the following:—

	Rs.
(*a*) Recoveries from Local Funds towards the cost of offices of control and account	80,000
(*b*) Fees and fines in Revenue Courts	38,000
(*c*) Recoveries of law charges other than those in pauper suits ...	9,000

"The remaining items are of small amount."

RECOVERIES ON ACCOUNT OF THE DANKUNI DRAINAGE SYSTEM.

The Hon'ble BABU SURENDRANATH BANERJEE asked:—

Receipts from "Recoveries on account of capitalized maintenance charges of the Dankuni Drainage System" (Head XXX of Appendix A) have been fixed at Rs. 4,000 in the estimates for 1895-96. The actuals for 1893-94 were Rs. 17,000. The revised estimates for 1894-95 came up to Rs. 15,000. An explanation is solicited as to why the estimate for 1895-96 should be fixed at Rs. 4,000 only?

The Hon'ble MR. BOURDILLON replied:—

"The total amount recoverable on account of the capitalised cost of the Dankuni Drainage Scheme was Rs. 65,344, which was to be realised in six years, beginning with 1891-92. It is calculated that up to the end of 1894-95 Rs. 60,000 will have been realised: of the balance of Rs. 5,344, it is proposed to recover Rs. 4,000 in 1895-96 and the remainder in 1896-97."

EXCHANGE COMPENSATION ALLOWANCE.

The Hon'ble BABU SURENDRANATH BANERJEE asked:—

The estimates for 1895-96 under the head of Charges of District Administration show an increase of Rs. 71,000 over the revised estimates for 1894-95 and an increase of Rs. 1,38,000 over the actuals of 1893-94. In the Explanatory Note it is stated that the increase is chiefly for Exchange Compensation Allowance. Will the Government state how much of the increase is due to Exchange Compensation Allowance, and how much to the other charges mentioned in the Explanatory Note?

The Hon'ble MR. BOURDILLON replied:—

"In the estimate for 1895-96 under the head stated there is an increase over the actuals of 1893-94 of nearly a lakh under Exchange Compensation Allowance. The remaining increase of Rs. 38,000 is due to the development of the Certificate Department (Rs. 10,000), to larger operations in surveying waste lands (Rs. 16,000), and to smaller items. It is impossible to compare the details of the budget of 1895-96 with those of the revised estimate of 1894-95, because they have not yet been ascertained."

AMOUNT OF EXCHANGE COMPENSATION ALLOWANCE IN BENGAL.

The Hon'ble BABU SURENDRANATH BANERJEE asked:—

Will the Government state the total amount payable for Exchange Compensation Allowance for the Bengal Establishment for 1895-96? What was the total amount paid in 1894-95?

The Hon'ble MR. BOURDILLON replied:—

"The revised estimate of the sums to be paid from Provincial Revenues in the shape of Exchange Compensation Allowance is Rs. 9,19,000 for 1894-95, and the budget estimate for 1895-96 is Rs. 11,43,000. The actual figures for 1894-95 are not yet available."

LOCAL ALLOWANCE TO DIRECTOR OF LAND RECORDS AND AGRICULTURE.

The Hon'ble BABU SURENDRANATH BANERJEE asked:—

In the Estimates for 1895-96 the expenditure under "Land Records and Agriculture" is put down at Rs. 90,000. Under the revised estimates for 1894-95, the expenditure was Rs. 87,000, and the actuals for 1893-94 came up to Rs. 81,000. The expenditure is thus steadily on the increase In the Explanatory Note it is stated that a part of this increase is due to the payment of Local Allowance to the Director of Land Records and Agriculture. Will the Government be pleased to state what is the amount of the allowance, why is it paid, and what is the nature of the service for which it is paid?

The Hon'ble MR. BOURDILLON replied:—

"The amount of the Local Allowance payable to the Director of Land Records and Agriculture is Rs. 250 a month in addition to the pay of his grade. Though called Director of Land Records, he is in fact Settlement Commissioner, and the allowance is drawn by him in that capacity."

CHARGES FOR SUPERINTENDENCE UNDER EXCISE.

The Hon'ble BABU SURENDRANATH BANERJEE asked:—

Under "Excise" the charges for Superintendence have steadily increased since 1893-94. The actuals for 1893-94 were Rs. 64,000; the revised estimate for 1894-95 put the expenditure at Rs. 66,000; the budget estimates for 1895-96 raise the amount to Rs. 73,000. It is explained that Rs. 4,000 have been provided for Exchange Compensation Allowance, and Rs. 1,500 for Local Allowance of Rs. 60 per mensem to each of the two Inspectors. Explanation

is solicited as to why this Local Allowance to Inspectors should be granted? Was no Exchange Compensation Allowance included in the revised estimate of 1894-95? If such allowance was included, what was the amount? Allowing in the budget estimate of 1895-96 Rs. 4,000 as Exchange Compensation Allowance, and also the allowance granted to Inspectors, there would still be left a balance of about Rs. 1,500, representing increased charge of Superintendence, in regard to which explanation is solicited?

The Hon'ble MR. BOURDILLON replied:—

"The Local Allowance which it is proposed to give to the Inspectors of Excise is granted to compensate them for the loss which is shown to be entailed upon them when travelling under the existing rules of travelling allowance applicable to their case.

"No Exchange Compensation Allowance was estimated under this Head in 1894-95.

"The difference between the budget of 1895-96 and the revised estimate of 1894-95 is an increase of Rs. 7,000. Of this sum, Rs. 5,500 are accounted for as the Hon'ble Member points out. The remaining Rs. 1,500 of the advance are due to the adjustment of the pay of one of the Inspectors, which was formerly debited under a separate minor head."

BOARD OF REVENUE EXPENDITURE.

The Hon'ble BABU SURENDRANATH BANERJEE asked:—

Under "General Administration", Head XVI, the revised estimate for 1894-95 shows that Rs. 2,80,000 represented the expenditure in connection with the Board of Revenue: the budget estimate for 1895-96 places the expenditure at Rs. 2,93,000. Explanation is solicited as to the increase of expenditure.

The Hon'ble MR. BOURDILLON replied:—

"In the increase of Rs. 13,000 pointed out by the Hon'ble Member, Exchange Compensation Allowance is responsible for Rs. 2,000. Another sum of Rs. 7,000 has been provided by the Accountant-General under the pay of the Junior Secretary to the Board of Revenue to meet the possible contingency of this appointment being held by a member of the Indian Civil Service. The remaining differences are of small amount."

[*Babu Surendranath Banerjee*; *Mr. Bourdillon.*]

JAIL EXPENDITURE.

The Hon'ble BABU SURENDRANATH BANERJEE asked:—

Under "Jails" the expenditure under "Salaries" in the revised estimate for 1894-95 is Rs. 2,55,273; in the budget estimate the expenditure is placed at Rs. 2,60,000 An explanation is solicited as to the increase.

The Hon'ble MR. BOURDILLON replied:—

"The figures quoted by the Hon'ble Member are those not of the revised but of the budget estimate of 1894-95. The difference between the budget figures of the two years is due to an expected increase in the payment of Exchange Compensation Allowance."

MARINE ESTABLISHMENTS.

The Hon'ble BABU SURENDRANATH BANERJEE asked:—

The expenditure under "Marine Establishments" shows a steady increase. In 1893-94 the actuals were Rs. 82,000; in 1894-95 the revised estimate places the expenditure at Rs. 83,000. In the budget estimate for 1895-96 the expenditure is put down at Rs. 87,000. An explanation is solicited as to the increase.

The Hon'ble MR. BOURDILLON replied:—

"The difference of Rs. 4,000 between the revised estimate of 1894-95 and the budget estimate of 1895-96 is due to the expected payment of Exchange Compensation Allowance at an enhanced rate."

MIDNAPORE CANAL.

The Hon'ble BABU SURENDRANATH BANERJEE asked:—

Under the revised estimate for 1894-95, the expenditure for the Midnapore Canal is put down at Rs. 2,57,400; the budget estimate of 1895-96 shows an expenditure of Rs. 3,12,000. Explanation is solicited as to the cause of the increase? The receipts for 1895-96 from the Midnapore Canal are estimated at Rs. 2,77,000. Is the Canal being worked at a loss?

[*Mr. Bourdillon; Babu Surendranath Banerjee.*]

The Hon'ble MR. BOURDILLON replied:—

"The cause of increased expenditure anticipated in 1894-95 and 1895-96 has already been stated in the reply to Question under heading of 'Irrigation Works.'

"In ordinary years there is no loss but a profit, as the following figures for the last five years will show:—

Year.	Net profit.
	Rs.
1889-90	76,929
1890-91	37,942
1891-92	27,373
1892-93	93,600
1893-94	1,03,712

"The low estimate of receipts in 1895-96 is explained by the fact that it is always safer to make a low estimate, since the receipts vary a good deal according to the rainfall and the state of the crops from year to year."

EXPENDITURE IN CARRYING OUT THE RECOMMENDATIONS OF THE POLICE COMMISSION.

The Hon'ble BABU SURENDRANATH BANERJEE asked:—

Will the Government be pleased to state the amount proposed to be spent in 1895-96 in carrying out the recommendations of the Police Commission? Will the Government be pleased to show the heads of the expenditure as recommended by the Police Commission, and the amount under each head, so as to indicate what part of the recommendations of the Commission has been given effect to?

The Hon'ble MR. BOURDILLON replied:—

"The following are the recommendations of the Police Commission with the estimated annual cost of giving effect to each of them:—

[*Mr. Bourdillon.*]

		Rs.
1.	To raise the pay of constables from Rs. 6 to Rs. 7 in the five Divisions of Burdwan, the Presidency, Rajshahi, Dacca and Chittagong	49,098
2.	To grant recruits free kits on joining	43,566
3.	To increase the clothing allowance	21,219
4.	To discontinue deductions from the men's pay towards a Superannuation Fund	57,534
5.	To grant special allowances to a prosecuting agency ...	21,120
6.	To grant allowances for the charge of a police-station	1,53,240
7.	To grant pony allowances to investigating officers ...	25,020
8.	To increase the number of Sub-Inspectors by reducing that of head-constables	2,82,484
9.	To increase the number of constables	50,343
10.	To reorganise the non-investigating police ...	30,338
	Total ...	7,33,962

"Complete effect has already been given to the first five recommendations as well as partial effect to the remainder except the seventh, which the Inspector-General of Police desires to leave in abeyance for the present. The substitution of Inspectors for Head-Constables as investigating officers is to be gradually carried out in ten years by an increased annual allotment of Rs. 28,206.

"On further consideration the Lieutenant-Governor has decided to spend on item No. 9 a further sum of Rs. 28,678, so that the total will be Rs. 79,021. Of this total, Rs. 33,594 have already been sanctioned, and the remainder will be expended in 1895-96. Under item No. 10 a reduction has been made of Rs. 2,113, and the total stands at Rs. 28,225, of which Rs. 21,690 have already been granted, and the remainder will be expended in the coming year.

"The net result is that out of the estimated additional annual cost of Rs. 7,33,962, which the recommendations of the Commission involve, the Government of Bengal has already sanctioned the expenditure of Rs. 4,29,147 per annum, while a further sum of Rs. 80,168 will be expended in 1895-96, making a total additional expenditure of Rs. 5,09,315 per annum to the end of that year.

"Complete effect will have been given to the recommendations of the Commission when the balance of two lakhs and a quarter has been granted gradually in eight years as explained above."

[*Mr. Womack.*]

The Hon'ble MR. WOMACK said:—"I desire in the first place to congratulate the Government on the elasticity of the Revenue for 1894-95, which has resulted in a welcome addition of 11½ lakhs to the closing balance, and I trust that it will be found that the Revenue for the coming year will be equally elastic, and that, instead of a reduction in the balances which is anticipated, there may be an increase. I also desire to congratulate Your Honour on the success which has attended your efforts towards a reduction in the expense under the head of 'Stationery and Printing': to the unofficial mind there is always a great waste of money on Stationery and far too much Government Printing, and I have no doubt that further retrenchment is possible. I trust Your Honour and your Successors will continue to keep a watch on this matter, so that the expenditure under these heads may be reduced to a minimum.

"I would again call attention to a subject which was discussed in this Chamber a year ago, and, in view of the very satisfactory state of the finances, would enquire whether some reduction of the fees charged on the institution of Suits in the Court of Small Causes is not possible?

"Your Honour may not be aware that, by the practice of the Court, no interest is allowed except under certain conditions in the amount sued for, while the decree carries with it no interest, and no fees other than the institution fees are recoverable under the decree; this being so, it must be very evident that a plaintiff, even when successful, is bound to be a considerable loser by going into Court, and the result is that the Court is not resorted to unless the creditor is assured that the only chance of recovering any portion of his money is by proceeding to law, and is also certain that when he has a decree he can enforce it. These two points are, I am aware, beyond the cognizance of this Council, but I hope they will meet with attention in the rules which I believe the High Court is now framing for the guidance of the Small Cause Court; but if anything can be done towards reducing the fees, it will, I am sure, be of great advantage to suitors, and will add to the usefulness of the Court.

"I desire to refer to a subject which has been considerably discussed of late, and on which I have been pleased to see the remarks of Your Honour in another place. I refer to the purchase of stores in this country. The figures before us give no idea of the amount of either the local or the imported stores, nor am I sufficiently well acquainted with the figures of the Government of India to

know whether the proportion of the cost of the purchasing and indenting establishment in England is added to the cost of stores imported. I am very much inclined to think not; I am quite willing to admit that at present, and for some time to come, a considerable proportion of the requirements of Government will have to be filled from Home, but I am certain that if a reasonable amount of discretion were allowed to the heads of departments, and if they were not so tied down by hard-and-fast rules, it would be greatly to the benefit of the country. I believe the Government of India has agreed to issue fresh rules on the subject to Local Governments and Heads of Departments, and I trust that those rules will be taken in the fullest and most liberal manner possible.

"In consequence of the financial position of the Province, I would ask Government, in view of the dreadful scourge of Small-pox with which the City is at present afflicted, whether it cannot assist the Municipality with a grant? I am given to understand that the extra cost to the Municipality will be something like Rs. 20,000; and as every rupee that the Corporation has is most urgently needed for absolutely necessary improvements, I am sure that if Government will give some assistance, it will be much appreciated."

The Hon'ble Babu Surendranath Banerjee said:—"I desire to join in the expression of congratulation at the excellent Budget which has been presented to the Council. It is impossible to approach the discussion of the Budget without congratulating the Hon'ble the Financial Secretary upon the very lucid statement which he has laid before us and the Government of Bengal upon the very efficient Financial Administration which that statement discloses. The Finances of a country might in one sense be said to form the backbone of the Administration. John Bright said in one of his speeches:—'Tell me what the financial position of a country is, and I will tell you all about the character of its Government and the position of the people.' Judged by this standard, the Financial Administration of the Province for the year 1894-95 may well challenge the approbation of public opinion. The receipts in the revised accounts of 1894-95 show an improvement of 14½ lakhs of rupees, the expenditure a decrease of half a lakh of rupees, and the closing balance a betterment of 11 lakhs of rupees, and this balance would have shown a still further improvement if the Government had not been obliged to make a contribution of three lakhs to the Imperial Government. The closing balance for 1894-95 is fixed at Rs. 33,73,000; while

[*Babu Surendranath Banerjee.*]

the closing balance for 1895-96 is estimated at Rs. 32,62,000. Such being the financial position of the Government, and such being our financial prospects, I venture to repeat one or two appeals which I made for the consideration of the Government about this time last year. At that time my criticisms were confronted with the remark that they were of a destructive character, and that I advocated impossible propositions involving increase of expenditure and diminution of revenue. It is impossible for me to say whether my criticisms on the present occasion will not be open to the same charge, but I feel that I shall not be doing my duty if I do not once again appeal to the Government, having regard to its prosperous financial position, to reconsider the question of the wages of its menial servants. They get a miserable pay and are obliged to rely upon the *bukshish* they can get or they can contrive to levy upon various parties. The price of food grains has risen enormously, and their wants have also grown with the growth of the times. In making this appeal I have high precedent to rely upon. The Government of India has just raised the pay of the sepoy from Rs. 7 to Rs. 9 a month. The pay of the sepoy had been fixed at Rs. 7 a month ever since 1796. I will read an extract from the speech of SIR JAMES WESTLAND which sets forth the grounds for this increment:—

'The remaining amount, Rx. 180,000, arises out of an announcement which I have a very great pleasure in being charged with the duty of making. The pay proper of the Native Sepoy has been seven rupees a month since 1796, but in addition to this he enjoys other allowances, some of which are common to the whole force, like compensation for dearness of provisions, and some are special concessions, which apply only to portions of the forces. These last were mostly given under conditions which are no longer applicable, and they create in some cases undesirable inequalities of treatment.

'The necessity for an increase in the general scale of Sepoy's allowances has for some time past become increasingly evident to all engaged in the administration of India; and when some months ago the present Commander-in-Chief urged that the measure could no longer be postponed, the Government unanimously accepted the conclusion.'

"I venture to affirm that the claims of the menial servants of the Government are much stronger than those of the Sepoys. They have no special concessions made to them—they enjoy no allowances. And the Government of India with a cash balance of only Rs. 46,000 has felt itself constrained in the interests of justice to grant this increase of pay to the Sepoys. I might therefore with some confidence make an appeal for an increase of pay being granted to

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the menial servants when we have a cash balance of nearly 33 lakhs of rupees. I would include in the same category the ministerial establishments attached to the Civil, Criminal and Revenue Courts. They draw small salaries, and they eke out their miserable allowances by resorting to practices which will not bear the test of scrutiny. These practices are a matter of open secret. The high officers of Government are well aware of them—the Government is well aware of them. The Government should openly face the situation, and put down the scandal by the only means in its power, viz., by raising the pay of the ministerial establishment.

"This is not an original idea of mine. The Government appointed a Salaries Commission, composed of some of the most distinguished officers of the Government, and they unanimously and distinctly recommended that an increase of at least 75 per cent. should be made to the pay of the ministerial servants of the Government. The Salaries Commission said:—

'Assuming that on the grounds now set forth sufficient cause has been shown for increasing the salaries of ministerial officers, we have next to consider what should be the ratio and amount of such increase. That it should be, as far as possible, proportionate to the increase in the cost of living that has taken place since the last revision of salaries, is obvious, but from the nature of the case it is difficult to state precisely what that increase has been.

* * * * * * *

'The best way to settle the matter will probably be to fix such a mean as will be fairly applicable all round. This will, it is true, afford more relief in some places than in others; but if we assume that there has been an all-round increase of 75 per cent. since 1867, and recommend a proportionate increase of salaries for the whole of the Lower Provinces, it will have the effect of granting sufficient relief even to the least favoured districts, and will thus remove all occasion for discontent. Our Colleague, Babu Durga Gati Banerjee, points out that the Revision Committee of 1867 did not fix the salaries at that time with any reference to the cost of living, and that to make a fair comparison we ought to go back to the early years of British rule, when the ministerial establishments were first organised, and since when there has not been any increase of salaries at all proportionate to that which has taken place in the cost of living.'

"Then the Commission go on to observe:—

'It now remains for us to determine the scale of salaries in the light of the foregoing remarks. Finding, as we do, that the cost of living may fairly be taken to have risen, in the aggregate, to 75 per cent. as compared with 1867, when the present scale of salaries

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was fixed, and that there are unmistakeable indications on all sides of a tendency upwards, we consider it desirable, not only in the interest of officers concerned, but also in the interests of the service and of the public at large, that the scale should be raised as much in reference to the present and prospective rise in the cost of living as the state of the finances may permit, though an increase to the full extent of 75 per cent. would be more than could possibly be conceded by Government. This is the more desirable, as the officers attached to the other departments, namely, the Subordinate Judicial, Executive and Educational Services, as also to the Police and Opium branches, have of late years had their position and prospects improved. Our proposals on this subject will be found in the next Chapter.'

"The Salaries Commission recommended a graded scheme. I will not read what they said with regard to this graded scheme, but they strongly advocated an increase to the salaries of ministerial establishments, having regard to the fact that such increase had taken place in the salaries of Judicial and Executive Officers of Government. On the last occasion, when I had the honour to bring forward a proposal of this kind, Your Honour was pleased to lay down the proposition that the Government would feel it its duty to resist to the utmost any application of this kind so long as it could do so consistently with a sense of justice. I rest my case upon the highest considerations of justice. If it is fair and just that Exchange Compensation Allowance should be granted to the highly-paid officers of Government drawing comfortable salaries, so that they might be relieved of the pressure to which they are subjected by the fall in the Exchange, is it not equally fair and just that the humblest servants of Government should receive an addition to their pay so that they might be placed above want and the temptations to which want exposes them? Is it not fair and just that the public should be safeguarded against any inducement which they may have to levy blackmail upon them? The Government is no respecter of persons. The highest and the humblest servants of Government are equal in its eyes. The same equal measure of justice should be dealt out to all. If the high officers of Government get exchange compensation allowance, the humbler servants of Government should be granted a small addition to their pay.

"Coming to the head of 'Law and Justice,' I find that there has been an increase of expenditure to the extent of 1½ lakhs. The greater part of this expenditure is due to Exchange Compensation Allowance. In the estimates for 1894-95, provision was made for the appointment of two Munsifs and of an Additional Judge for the Eastern Districts. I do not know whether these

[*Babu Surendranath Banerjee.*]

appointments have been made, but I can find no similar provision in the budget estimates before us. Turning to the question of the increase in the number of Munsifs, I venture to differ from the opinion of the Government in this matter. I maintain that the establishment of Munsifs is not adequate to the increasing work with which they have to cope, and I rely upon the statistics furnished by the Hon'ble the Chief Secretary in reply to a question which I had the honour to put in this Council. I find that the number of contested cases decided by Munsifs under the Small Cause Court procedure in 1890 came up to 11,000, whereas in 1893 the number rose to about 21,000; that is to say, so far as this branch of cases is concerned, the increase was nearly 50 per cent. Then, with reference to ordinary cases under the ordinary procedure, the number in 1890 was 77,000 and in 1893, 82,000; here the increase was small and insignificant. Taking all the cases, contested and uncontested, I find that the number rose from 400,000 to over 500,000, or, in other words, the number of cases had risen by more than 25 per cent. in the four years from 1890 to 1893. Now, what has been the increase in the establishment of Munsifs from 1890 to 1893? The number of Munsifs had risen from 262 to 289, or, in other words, by about 10 per cent. Therefore we are driven to the conclusion that whereas the number of cases increased by nearly 25 per cent., the number of Munsifs was increased by only 10 per cent. Then you must bear in mind that there was much important work done by Munsifs which is not included in these statistics—I mean what is called 'Miscellaneous Work'. I am told by my hon'ble friend Mr. W. C. Bonnerjee that some portion of the miscellaneous work done by Munsifs is of a very important and responsible character. I am well aware of the remark made in the statistics furnished to us that there has been a slight improvement in the outturn of work done by Munsifs—an improvement in the quantity of work done; but I venture to express the opinion that an increase in the quantity of work turned out does not necessarily involve an improvement in the quality of the work done. In Judicial work improvement in quantity often means deterioration in quality. At any rate we have this fact, that the addition to the staff of Munsifs has not been in anything like the ratio in which the work has increased. I therefore most respectfully venture to solicit the attention of the Government to this important matter. I know that it means an addition to the permanent expenditure of the Government;

[*Babu Surendranath Banerjee.*]

but having regard to the financial position of the Government and the statistics to which I have referred, I hope the Government will see its way to making some addition to the number of Munsifs.

"There is another matter to which I wish to refer in this connection, namely, that Munsifs suffer very much from bad house accommodation. Your Honour gave expression to this opinion in your recent tour in the Eastern Districts, and I appeal to the Hon'ble MR. BEIGHTON, whose intimate knowledge of the position and work of Munsifs is very great, in support of my observation. Many of the Munsifs have been known to fall victims to their unhealthy surroundings. The High Court has called attention to the want of proper accommodation for Munsifs, and I submit that it is the duty of the Government to provide proper house accommodation for their officers, especially in the outlying and unhealthy districts. It is a duty recognised by Government in regard to its executive officers, and I hope the duty will also be recognised so far as Munsifs are concerned.

"Coming to the question of 'Education,' I find that there has been an increase under all the heads of this branch, except 'Miscellaneous,' in which there has been a slight decrease. I should like to be informed what the items are which are included under this head, and in what respect the decrease has taken place. I think it would be satisfactory if the heads of expenditure are so arranged as to show how much has been expended under high education and how much under primary education.

"With reference to the Excise Revenue, I find that the fees from distilleries and the duties from the sale of liquor are steadily increasing. In 1893-94 the receipts under this head came up to Rs. 91,000; in 1894-95 they rose to Rs. 94,000; in the budget estimates for 1895-96 they have been fixed at Rs. 96,000.

"On the other hand, so far as *ganja* and opium are concerned, there has been no substantial increase. Are we then to conclude that the expansion of the Revenue was due to the expansion of the Outstill system in the outlying parts of the country? and if this was so, it would represent a deplorable departure in the policy of the Government and a violation of the mandate of Parliament. Such a policy would be disastrous to the best interests of the peasantry of this Province, and it would involve the financial ruin of the Government, for no Government can thrive upon the wholesale demoralisation of the people.

[*Babu Surendranath Banerjee; Mr. Lyall.*]

"One word more before I conclude. We are all grateful to the Government for allowing us the right of discussing the Budget in this Council, but I think the character and tone of the discussions will greatly improve if we have more detailed information given to us. At present we have only the major heads and the expenditure under those heads. For instance, under the head of 'High Court,' the total amount of expenditure is shown. We do not know what the salaries of the Judges are, what the number of the Judges, the establishment of officers, and the like are. The details are not given. If our criticisms are to be of any value, we ought to be able to enter into those details and not confine our remarks to the main outlines under each head. I understand that in the office of the Accountant-General a detailed budget is prepared. Would there be any objection to lay that Budget before this Council? The members of the Bombay Legislative Council are furnished with such a detailed budget, and they are able to criticise the details of Financial Administration far more effectively than it is possible for us to do here with the scanty information before us. Perhaps if such a procedure were followed it may lead to the postponement of the debate on the Budget to the middle of June or July, but as our function is not to sanction or to modify, but only to criticise and discuss, I do not think such a course would lead to any public inconvenience."

The Hon'ble Mr. Lyall said:—"As an old Inspector-General of Police I desire to say a few words on a very important point in the Budget now before us, namely, the increased expenditure under the head of 'Police.' While I held the position of Inspector-General I found the efficiency of the Police and their good working very seriously affected by the very large reductions which took place during the time when Sir Ashley Eden was Lieutenant-Governor. I have always looked upon those reductions as the one blot on that Administration. Here, in Bengal, in the absence of any other local agency, we perhaps depend more than in any other Province on the efficiency of our Police, and anything which will raise that efficiency and make the Police less corrupt will be conducive both to the good of the country and to the advantage of the Administration. I rejoice therefore to see that Your Honour has been able to sanction so large an additional expenditure on account of the Police. There are, however, one or two points of Police Administration in regard to which I think further improvement is possible. In the old days the

post of Court Inspector was very much run after. Men get old, and many get fat, and when a man who had past his prime was found unfit for the active duties of an Inspector, he was given the comparatively easy post of Court Inspector. That post is now held by Sub-Inspectors, most of whom would be equally efficient in the post of Inspector. The change which I advocate can be made without any increased expenditure. Another point to which I wish to refer is the very great run there was at one time for police appointments when SIR RIVERS THOMPSON promised to promote one or two members of the Police Force to the Subordinate Executive Service. When it was found that to enter the Police opened a door to the Subordinate Executive Service, a class of men entered the force who had never entered it before, as they saw before them prospects of possible promotion. We all know what effect the office of Archbishop of Canterbury has in ordinary men to enter the Church, and what effect the possibility of obtaining a seat on the Woolsack has on the Bar, and the promotions from the Police to the Executive Service certainly produced a similar effect. I think it would be well if Your Honour would again open that means of promotion to deserving officers of Police.

"I wish to add one remark with reference to what fell from the Hon'ble Mr. WOMACK as to the reductions under the heads of 'Stationery and Printing.' The Department of Stationery is under my immediate control, and I wish to say that it is owing to the judicious expenditure of a comparatively small sum in giving increased accommodation to the Stationery Office that the large reductions which have been made have been found possible, and it is due to Your Honour to state that it is entirely to you that this reduction has been made possible. So long as the Stationery Office was so dreadfully cramped for space, nothing like proper economy was possible."

The Hon'ble MR. BEIGHTON said:—"As a special appeal has been made to me as possessing perhaps a more intimate knowlege of the work performed by Munsifs, the way in which they are housed, and the inconveniences from which they suffer, especially in remote and malarious subdivisions, than other hon'ble members, I feel bound to say that it is impossible not to sympathise to a great extent with what the Hon'ble BABU SURENDRANATH BANERJEE has said. I believe His Honour is himself aware from personal observation of the extremely rough accommodation with which Munsifs in many unhealthy

localities have to content themselves. In some places there is no dwelling available at all, even of the rudest description. An instance of this kind occurred not long ago. The Munsif of Baraset was compelled to apply to the High Court for permission to live in Calcutta owing to his absolute inability to find a residence of any kind at this subdivision. The question of supplying houses for Munsifs is one for the consideration of Government, and its complete solution in any satisfactory way must necessarily involve a large outlay. Nevertheless I should be very glad if the Council were to hear to-day from His Honour that Government were prepared by way of a commencement to meet this grievance, to build houses in some selected subdivisions where the greatest difficulty is felt, and allow Munsifs to occupy them on reasonable terms.

"The Hon'ble Member has also made some observations on the amount of work which devolves on Munsifs, and from statistics which he read he came to the conclusion that while the number of the Munsifs in the last few years has increased by 10 per cent., the number of cases disposed of by them has increased by 20 per cent. The Subordinate Judicial Service is no doubt hardworked, but I think a little too much is sometimes made of the amount of labour they have to undergo. As a rule they sit for a considerable number of hours in Court, but it would be a mistake to suppose that the whole of this represents a very large amount of mental strain. The great bulk of their work is not of a complicated or difficult nature. Their judicial work may be roughly divided into three classes: cases under the rent-law, suits under the Small Cause Court Procedure, and suits involving the adjudication of questions of title. The work under the latter head is undoubtedly difficult, and for its proper performance demands intellectual qualities of a high order. The other two classes of suits, however, cannot be said to make much demand upon the mental powers. The distribution of work is generally arranged so that a Munsif may have upon his file a fair proportion of cases of all classes, so that the aggregate of work involving a severe mental strain is not as a rule great. Then, a great deal of the judicial work of Munsifs is uncontested. This practically involves no intellectual exertion. The same may be said of the miscellaneous business to which reference has been made, consisting of the examination of accounts and the supervision of the Nizarat and Copying Departments. The number of hours, therefore, which a Munsif has to sit is not a true criterion of the expenditure of brain power involved.

[*Mr. Beighton.*]

"I wish to add a few remarks with reference to what fell from the Hon'ble MR. WOMACK on the report of the Calcutta Small Cause Court.

"The Hon'ble Member seems to me to labour under certain misapprehensions. He complained in the first place that no fees were allowed to a successful ainpltiff for the legal practitioner engaged to conduct the case. This is, however, distinctly provided for in section 76 of the Presidency Small Cause Courts Act, except in suits below Rs. 20 in value, and even in such suits the Court may allow a fee, if the Court considers the employment of a practitioner 'as under the circumstances reasonable.'

"Then, again, he complained that no interest was allowed on current accounts before the decree was passed, and also that after decree until the date of realization the Court refuses interest. As to the first point the question involved is one of law and is entirely beyond the control of Government in the Financial Department. The usual practice is that on a running account for goods sold, a merchant or tradesman is not entitled to interest unless there was an actual agreement to pay interest on the part of the purchaser. The Calcutta Small Cause Court, like all other Courts, is bound in this respect, as in others, to follow the law. As regards interest after decree, a provision of the Civil Procedure Code (section 209) has been incorporated in the Presidency Small Cause Courts' Act, and this provision allows of the Court awarding interest at such rate as the Court considers reasonable. With reference to another observation of the Hon'ble Member that the fees payable on the institution of suits in the Small Cause Court are too high, there can be no doubt that they are somewhat higher than institution fees on suit filed in the ordinary tribunals. With regard to this, it will be within the knowledge of many hon'ble members of the Council that I made a detailed enquiry into the organization of the establishment of the Calcutta Small Cause Court some two years ago, and that I recommended considerable reductions of expenditure, some of which have been already, and others will in time be, carried out. There can be no doubt that these reductions have considerably increased the profits of the Court, and if a representation is made on the subject to Government, this increase in profit should in fairness to the public be borne in mind when the question of reconsidering the amount of institution fees leviable is again taken up. I am not aware whether any such representation has

been yet made or whether the subject has been discussed in the Financial Department."

The Hon'ble Mr. Cotton said:—"I only wish to trouble the Council with a very few observations in regard to the Budget under consideration. It is impossible, I think, not to sympathise to a large extent with the remarks and criticisms made by the Hon'ble Babu Surendranath Banerjee, and in one particular I must say I personally sympathise largely with what he said on the subject of the improvement of the salaries of the lowly-paid servants of the Government. I have no doubt whatever that the time is not far distant when some increase of pay will have to be granted, certainly to some of the menial employés of the Administration, and possibly to some of the more underpaid clerks. The practical difficulty on these occasions arises from financial considerations. The Government have in the past year granted a large increase to the lowly-paid officers in the Police. The statement laid before you to-day shows that the total sanctioned increase of expenditure in the Police Department amounts to considerably over seven lakhs of rupees per annum. Such an increase as this involves a heavy strain on the resources of the Administration. Although it is not easy to make an estimate of what it would cost to make a corresponding increase of pay to the Ministerial Establishments in these Provinces, there can be no reasonable doubt that if an increase corresponding to that given to the Police were given generally, it would cost three or four times as much. Funds are not available to the Government for this sort of generosity. I have no doubt that in some measure the demands of the hon'ble member will be complied with; but that they will be complied with as liberally as the corresponding demand in the case of the Police Constabulary has been met I am afraid is not possible. Then, again, with regard to the Civil Courts, it is impossible not to feel that there is great force in what hon'ble members have told us, namely, that the Munsifs are very indifferently housed. On the other hand, it can hardly be expected that the Government should provide houses gratis for the large number of Munsifs who are scattered all over the Province; and if suitable accommodation is provided, it will be necessary to charge them a suitable rent for the buildings which the Government may construct. But I am not altogether sure how far the Munsifs themselves will be pleased with such an arrangement. One of the advantages of a Munsif's appointment in the Mufassal

is, that he spends very little. It is one of the points in which the Provincial Judicial Service is preferable to the Provincial Executive Service, that Munsifs are able to live more cheaply than their contemporaries in the executive line. If houses are constructed for them, they will have to raise their standard of living, and they will have to pay suitable rents. Again, the amount of work done by a Munsif has undoubtedly increased in the ratio indicated by the Hon'ble Member, but it is right that I should point out that this large increase of work is almost entirely in the Small Cause Court Department. As the Hon'ble Member justly stated, the increase in the number of ordinary contested suits is very slight indeed, namely, from 77,000 suits to 82,000 in the course of five years, and that is an increase which has been more than met by the considerable number (29) of additional Munsifs appointed during the same period. The increase in Small Cause Court work is due to the fact that a few years ago Small Cause Court cases were not triable by Munsifs. They have now, on the recommendation of the High Court, been largely vested with power to try cases under the Small Cause Court procedure, and are so enabled to deal with petty cases with greater despatch and promptitude. It is to the interest of the public that this should be so. But uncontested cases give little or no trouble to the presiding Judge, and even in regard to petty contested cases—I can speak from personal experience as a Small Cause Court Judge—that they give very little trouble. Therefore the department in which the increase of the work of the Munsif is largest does not press very much upon the time of the Munsif. I wish to add that while the Government is fully alive to the necessity for increasing the staff of Munsifs, Munsifs are not the only officers of Government who are hardworked. The executive officers of the Government are also very hardworked. I should be justified in saying that the class of Deputy Magistrates as a whole is as hard-worked, if not harder worked, than Munsifs. Certainly I find from my experience that they suffer more largely from ill-health brought about by work and exposure than civil judicial officers. Although it is very easy to urge upon the Government the necessity for increasing these Courts by adding to the number of Munsifs, yet when one takes the question up practically, it is found that financial considerations preclude any very active progress in that direction. The progress which has been made in this direction since I have

had the honour to be Chief Secretary is greater than that which has been made in most of the other departments of the Government. Look at other departments: look at the Jails, for instance. How easy it would be to spend a few lakhs in improving the prisons in this Province; to rebuild prisons, the construction of which has been condemned, and to construct new jails on the most improved methods where they are required. Look how much money could be spent on the Registration Department, which is expanding by leaps and bounds; look at the public buildings of all sorts and descriptions, Administrative, Medical, Educational; look at the Munsifs' Courts. If we are to house Munsifs properly, it is also necessary that they should have suitable Courts. There are numberless directions in which the Government could spend its money, and this I may state on behalf of the Government that it does spend all the money it can in the directions in which it is most required. If money were available, none of the objects to which the Hon'ble BABU SURENDRANATH BANERJEE has referred would be left unprovided. If money were available, all his prayers would be granted. Much has been done hitherto in these directions, and I am sure that, with the improving condition of the Provincial Finances, more will be done in the future."

The Hon'ble MR. BEIGHTON explained:—"With the permission of the Hon'ble THE PRESIDENT, I wish to make one remark with regard to what has fallen from the Hon'ble the Chief Secretary. In alluding to my observations as to the insufficiency of house accommodation for Munsifs and in expressing his concurrence with these observations, he expressed a doubt whether they would be willing to pay rent for houses if Government provided them. I think that, knowing as I do the views of Munsifs better probably than any other official member of the Council, I can assure my hon'ble friend that they would be only too glad to pay any reasonable rent which the Government might think it right to impose."

The Hon'ble MR. BOURDILLON said:—"Before I proceed to answer in detail he criticisms of the budget statement to which we have just listened, I desire o express on my own behalf and on behalf of the Government my appreciation of the kindly tone of those criticisms; they breathe a spirit of appreciation of the work done by the Government and of sympathy with its difficulties,

which makes the task of replying to these observations as pleasant as it is easy. The Hon'ble MR. WOMACK commenced by congratulating the Government on the reductions which have been effected in the course of the past year and the year before in the departments of Stationery and Printing: his remarks upon this point were extremely acceptable to myself, as I know how much attention has been given by His Honour the President to the matter, and what pleasure it has given me to aid his efforts in that direction; and it is gratifying to find that a practical member like the Hon'ble MR. WOMACK has appreciated our exertions, and that speaking on behalf of the large and influential body he represents, he has been able to congratulate the Government on its economies under the head of 'Stationery and Printing'. As regards the fees in the Small Cause Court, the Hon'ble the Legal Remembrancer has relieved me of the necessity of giving any answer. The Hon'ble Member can hardly expect me to give him an assurance that the Government will take steps to bring about a reduction of those fees. All that I can possibly say is that the matter will be carefully looked into, and that what can be done will be done. With regard to the purchase of stores, that is virtually a measure which is in the hands of the Government of India; for the Viceroy in Council and the Secretary of State have long since laid down very strict rules as to purchasing in this country articles of European manufacture. The matter has for some time had the personal attention of the Lieutenant-Governor, and as an instance of His Honour's practical support of local products, I may mention that during the last two years large savings have been effected by an order that all the paper used by officials under the Bengal Government should be paper made in this country. The Hon'ble Member concluded his remarks by an appeal to the Government to help the Calcutta Municipality in its efforts to abate the Small-pox epidemic now raging, and to provide relief for the sufferers from that dreadful scourge. I may tell the Hon'ble Member that a similar appeal has been made within the last few days by the Calcutta Municipality, and it has been my duty to reply to them that in the opinion of the Government it is a matter with which they should deal themselves, and that the epidemic being of a local character and the Calcutta Municipality having large funds at its disposal, the Government is not prepared to come forward with pecuniary assistance. It is not perhaps known to the hon'ble member how very large a proportion—

[*Mr. Bourdillon.*]

two-thirds at least—of the cost of the medical institutions in the City is contributed by Government, and in the case of the Campbell Hospital, to which the Municipality does contribute a considerable sum, the proportion of the expenditure which is defrayed from Provincial Revenues is 60 per cent.

"The Hon'ble BABU SURENDRANATH BANERJEE suggested the propriety of raising the salaries of members of the ministerial establishments, and his representations have been replied to both by the Hon'ble the Chief Secretary and the Hon'ble the Legal Remembrancer. It is admitted that if funds were available, there is hardly any direction in which money could be better spent than in raising the salaries of these low-paid servants of the Government. But this is a very large question, and, unlike other cases in which expenditure is needed, this is a matter in regard to which if a step in advance is once taken, there is no retreat. If the wages of the ministerial establishments are generally increased, the charge becomes a permanent one, and we cannot go back. It is obvious therefore that the matter must be taken up with great care and circumspection. Already in districts where the price of grain is very high, the Government is able under the rules in the Civil Account Code to raise temporarily the pay of such of its servants as draw less than a certain minimum salary, and I may mention that in 1893-94 considerable sums were granted for this purpose in districts where prices ruled exceptionally high.

"With regard to 'Law and Justice,' it is unnecessary for me to add anything to what has already been said by the Hon'ble the Chief Secretary, since he dwelt at length on the question of the number of Munsifs and the increase of their work, but I may state that the question of the housing of Munsifs is a matter to which the Lieutenant-Governor in his frequent tours through the Province has constantly paid attention, and it is one to which careful consideration will be devoted within the next few months in connection with the balance at the disposal of Government.

"The Hon'ble Member next asked for the details of expenditure under 'Education.' I hold in my hands a statement which shows at one view the whole expenditure upon Education in Bengal, whether from Provincial Revenues, District Funds, Municipal Funds, the Mohsin Fund, or other sources. It is divided into several main heads, showing the expenditure not only in the Education Budget proper, but also that on special and medical instruction, and the public

works expenditure upon school buildings; so that the Hon'ble Member will be able to see the amount spent under any head in any year as well as the source from which the funds have been derived. The Lieutenant-Governor caused this statement to be prepared with the express object of laying it before the Council on this occasion, but as this is the first year of its preparation, all the Commissioners of Divisions have not been able to supply the details of municipal expenditure, and so far as that information goes, the statement is incomplete. I shall be very glad to supply the hon'ble member with a copy of this statement as it now is, and also to send him a copy of the statement when it has been completed showing the expenditure upon Education from Municipal Funds.

"The expenditure on 'Excise' also came under criticism, and the Hon'ble Member argued that the increase in the receipts must be due to the development of the Outstill system. In answering the Hon'ble Member's second question this morning, I pointed out that during the last three years the Outstill system has not been introduced in any district except only in part of Cuttack, where, in 1893, six Outstills were sanctioned in a jungly part of the district, remote from the sadar distillery. Speaking from memory, I venture to say that the number of sanctioned Outstills has not increased. The Hon'ble Member should bear in mind the distinction between the number of shops sanctioned and the number of shops actually let: the numbers sometimes differ, because shops which have been sanctioned are not let. The number of shops for each district is settled every year, and in the number thus settled little variation takes place from year to year.

"The shops are then let out, and if any one year shows a larger number of shops let than that which preceded it, this result is not due to any effort on the part of the Government to develop the drinking habit among the people: it is rather the barometer of the prosperity or otherwise of the times. When the year is prosperous, the sanctioned shops are all taken, but when times are hard, the sanctioned shops are not all let.

"Lastly, with regard to what fell from the hon'ble member as to the desirability of laying a detailed Budget on the table, I have to inform him that such a Budget is already prepared. What is technically known as the Yellow Book contains in detail all the information the Hon'ble Member desires to have, but

it refers to actuals, not to estimates. I would also point out that the perusal of such a detailed statement will be extremely irksome to most persons, though perhaps one or two Hon'ble Members might take the trouble to look into the details. However, subject to any remarks which may be made by His Honour the President, I will only say that, if desired, the latest existing detailed statement of the kind described can be laid upon the table, when the annual Provincial Budget is submitted to this Council.

"I desire to add a word more, namely, that in acknowledging on behalf of Government the unanimous approval of the financial arrangements of the Province which has been accorded by this Council, it is only fair to say that the Government has had nothing to do with the increase in the revenues, which is chiefly due to the general prosperity of the country and the operations of the Eastern Bengal Railway. All we can lay claim to is some credit for the very close way in which our expenditure has been kept within the budget sanctions of the year before. This is due to the loyal manner in which the careful instructions issued by the Government of India have been carried out by all the officers to whom they were communicated in 1894-95, and again at the time when the present Budget was being framed. If Hon'ble Members will look at the budget estimates of the year 1894-95 and at the revised estimates of the same year, they will find that the sanctioned grants have not been exceeded under any considerable head. There is only one head in which there has been any considerable increase, and that increase is the best possible proof of the intention of the Government to foster Local Self-Government; for the sum of Rs. 2,30,000 has been taken from Provincial Funds and made over to Local Funds. Of this sum, Rs. 1,54,000 represent the cost of public works of various kinds, which have been entrusted for execution to District Officers and Local Boards, and the large sum of Rs 60,000 has been taken from under the control of the Director of Public Instruction and made over to District Boards to meet the wants of primary education.

"It is only left for me to congratulate Your Honour that in the last year of your Administration it will be your good fortune to have the control of so large a sum as 11½ lakhs for the execution of many schemes long since approved but delayed hitherto merely for want of funds, and generally for promoting the material progress of this great Province."

[*The President.*]

The Hon'ble THE PRESIDENT said:—"I wish to associate myself with the remarks which have just been made by the Hon'ble the Financial Secretary with regard to the satisfaction which I myself and every member of the Government must feel at the manner in which our Financial Statement has been treated by this Council. It has been received in a flattering and appreciative way, and the remarks, whether appreciative or critical, clearly showed that the financial control which has been exercised over the Province has been understood and looked into, and that the deliberate feelings of my hon'ble colleagues in this Council support the Government in the measures which it has taken.

"Before going into further details I ask your leave, gentlemen, to make a few remarks upon the subject of interpellations in general, to which I have been partially led by the questions which have been put to-day. You, no doubt, are aware that the project of allowing a greater freedom in the putting of interpellations always accompanied the idea of the enlargement of the Legislative Councils, and while it is not fitting for me to betray the secrets and discussions which took place in the Executive Council, I think I may say that every member of that Council, at different times, expressed the view that interpellations of the kind that we looked forward to would be in the highest degree beneficial to the establishing of good relations between the Government and the people of the country. What our view was cannot, I ventured to think, be better expressed than as put in a Minute of SIR GEORGE CHESNEY to the effect that the Government has nothing to conceal, that it has every desire to explain the reasons for its actions, and it has everything to gain by making those reasons known as fully as possible. I think you will agree with me that the results have not altogether met the anticipations which we formed. Somehow or other—it is difficult to say how—a sort of idea has grown up in the public mind that an interpellation must necessarily be hostile, and that an Hon'ble Member who puts an interpellation may be presumed to have a desire to heckle the Government or to expose its shortcomings in some way or another. I think it is most unfortunate that such a feeling should have grown up. It has been due to criticisms which have been passed on the style of questions put, not so much in this Council as in the Councils of other provinces, and I think in many cases these criticisms, whether

applied to other provinces or applied to this Province, have not been altogether reasonable or sympathetic. I certainly feel that I have nothing very much to complain of as regards the spirit with which interpellations have been put here, but I think that we might put interpellations upon a better footing if it were thoroughly understood that the Government desire to deal with all the members of this Council as its trusted Councillors whom it wishes to associate with itself in its policy, and to whom it wishes to impart the information which it possesses. On many occasions interpellations take this form:—'Does the Government know of a certain action which has been pursued by a certain officer in the mufassal?' Either the Government says, 'we do not know, but we shall enquire,' or else the Government says, 'yes, we know; the officer in question was acting within his legal and prescribed powers, and it is not desirable for the Government to be always putting its finger into the works of its machinery and making the wheels go round in a different way or in a different direction than the one in which it is intended to go round.' This feeling that the Government should interfere directly in such matters is perhaps attributed to the oriental notion which has come down to us from antiquity that the Government is all-powerful, and that it is able to redress an injury whenever it sees it. Unfortunately, the Government is not all-powerful, and the limits of human efforts are extremely restricted. There are but 24 hours in a day, and it is impossible to spend all those 24 hours in looking after what is done by officers in the mufassal in regard to matters in which the law or the Government gives them power to act independently. Then, there is another class of questions, of which we have had an instance to-day. My hon'ble friend, Babu Surendranath Banerjee, who put them, desired to get information on many subjects, and seems to think that the only way of getting that information is to put these questions. What I want to suggest for the future carrying out of the work of the Council is, that it would be very convenient if Hon'ble Members would consult the Secretaries to the Government privately on subjects of this kind before they put their questions in the Council. There are a great many points in the list of to-day's questions which could have been explained to the Hon'ble Member more quickly and even more clearly if they had been put in the Secretary's own room, and if he was shown the papers on which the answers had been based. I am afraid that my friends, the Secretaries, might think that a new vista of horrors is opening out to them,

[*The President.*]

if, in addition to their ordinary work, of which no one knows better than I do how laborious it is, they may have to spend hours in explaining these things to the non-official members of the Council. Of course, if my suggestion is followed, you, gentlemen, will not require of them any undue expenditure of time of the kind to which I have alluded. I think it will be quite possible to fix a certain day and a certain hour at which the Secretary would be available, and having received notice beforehand would have the papers ready and explain matters to any member who may desire any information or explanation. I make this suggestion not with the idea of burking any enquiry or putting any restriction upon the power of putting interpellations. Ordinarily speaking, where information is desired, it can be more quickly obtained in this way. If the information that is obtained leads hon'ble members to think that the action or the policy of the Government requires correction or criticism, then would be his opportunity to put his question in Council on a better basis and in a more complete way than he can now. I believe that if this suggestion is taken advantage of, it will, to some extent, lead to a diminution of interpellations, and to a great extent will make the questions more definite, more pointed, more precise, and more useful in drawing out the particular points which are required to elucidate facts or policy which may require discussion.

"Turning to the particular points put before us, there is but little left for me to say after the able manner in which the Hon'ble the Financial Secretary has replied to the different criticisms which have been brought forward, and I wish to say with him how much I appreciate the manner in which these suggestions have been made. I felt it my duty on a former occasion to use words which have been quoted to-day, and which imply a certain amount of complaint that the object of our debators seemed to be to cut down revenue in every direction and to increase expenditure. Nothing that I said on that occasion applies to what has been said to-day. All the suggestions made to-day are useful and practical ones—the suggestions of men who know what they are talking about, and whose views are such as to deserve the serious attention of Government and the sympathetic desire of the Government to meet their suggestions as far as possible.

"With regard to the Hon'ble MR. WOMACK's remarks about the Small Cause Courts, I think those remarks have been fully and completely answered.

[*The President.*]

As the Hon'ble MR. BOURDILLON has said, we will have a careful enquiry made into the question of fees, and ascertain whether it is in the competence of Government to alter them, and whether if it is desirable to do so, it can be done without incurring any financial loss or giving to suitors advantages which would be relatively too large compared with the costs which have to be incurred in other Courts.

"With regard to the question of Stores, the Hon'ble MR. BOURDILLON has already said what we have done in the matter of Stationery. The chief class of stores is, of course, that purchased by the Public Works Department; and, as I mentioned in the Supreme Council on Thursday last, that subject has lately been engaging my attention, and I have been looking with some disappointment to see how little had been done to carry out the policy of procuring them in the country. As I said then, until manufactories are set up in which steel shall be cast or iron wrought in this country, it will be impossible to avoid procuring from England the articles which our Public Works Departments most require, such as steel rails, steel sleepers, rolled joists, angle iron, and articles of that kind. No experienced commercial gentleman would advise us to procure them in this country through middlemen, because obviously the profit of the middlemen would be thrown upon the price put on the article, and no one, with any knowledge of the subject, will deny that it must be cheaper to buy in England and import direct from the India Office than to buy here from merchants in this country, who have to purchase from the manufacturers in England and impose their own profit before they part with the articles to purchasers. But I propose to take steps to have a return prepared annually and laid before the Council on the next recurring occasion to show what the nature of the stores is which are purchased in England and those purchased in India, and from that return it will be possible to draw a conclusion whether anything is done, which at all contravenes the rules of Government or that Resolution which the Hon'ble MR. WOMACK has drawn attention to. It may also possibly have the beneficial effect of pointing out to the people in the trade what the nature and quantity of articles of this kind is, and of encouraging them to get out the necessary machinery for casting steel rails or rolling iron joists in this country. There is nothing which is more to be desired than the establishment of industries of that kind. It was a great disappointment to me that the Barrakur Iron Works, which was handed over to a private Company partly at my

suggestion when I was Public Works Member of Council, in the hope that that Company would carry on the works more efficiently than the Government had done—it was a great disappointment to me that the anticipated progress has not been made, but I am still not without hope that we may see iron wrought and steel cast in these Iron Works, and if not there, elsewhere.

"Coming next to the Hon'ble BABU SURENDRANATH BANERJEE'S remarks about the wages of menials, the Hon'ble the Chief Secretary has represented my views upon this subject. I think that the quotation which my hon'ble friend made from my remarks on a former occasion could hardly have been correctly made. I do not challenge it, but it did not seem to me to be anything which I remember to have said, or to express the attitude of mind which I took up with regard to that particular question. I may certainly say that the raising of the wages of the menial servants of Government would be, in my opinion, a very desirable thing if financial considerations allowed it, and if the Hon'ble Member could tell me what it would come up to, or if I was able to form off-hand an estimate, however rough, of the cost of doing it, I would at the present moment give the Hon'ble Member an answer more or less indicating my view as to the possibility of carrying out this matter during the present year. I may point out with regard to the raising of the pay of the Sepoys, which has just been effected, that this is an instance which shows how slowly a reform of that kind is carried out, and how long the applicants have to knock at the unwilling doors of the Treasury. As he himself remarked, the wages of the Sepoys had not been raised since 1796. Indeed, I may say that during the last fifteen years I have been rather intimately acquainted with the financial business of the Government, and I know that this proposal has been continually before the Government of India during that time, and as you see it has only just been carried out. The question of the wages of the menial servants of the Government stands in the same position; it has to knock at the door and continually go on knocking, and I have no doubt that the door will be opened at some time. I should be very glad if it could be opened during my time. One word as to the analogy between this increase of the wages of the menial servants and the Exchange Compensation Allowance to which reference was made by the hon'ble member. I would point out that we do for our menial servants what exactly corresponds with the Exchange

[*The President.*]

Compensation Allowance given to European officers. These menial servants do not send their wives and children to England, and have not to remit money there. What corresponds in their case to the increased expenditure thrown on European officers by reason of the fall in exchange is the rise in the price of food. The compensation for the dearness of food which is constantly given to menial servants by definite rules when the market prices reach certain limits exactly corresponds with the Compensation Allowance when the exchange falls below certain rates. I only mention this as an academical argument, as showing that we have something to say on our side, and not as implying that I wish to contest the propriety of the suggestion which the hon'ble member has made, or as drawing back from what I have said as to my own desire to carry out this suggestion.

"Next, with reference to Munsifs and the supplying of suitable accommodation for them, with regard to which an appeal has been made, which in no degree exceeds my own views as to the hardships which Munsifs in many parts of the country have to suffer. I wish to mention that we are at present engaged in correspondence with the High Court on the subject. I have pointed out that there are three alternatives: first, the one mentioned by the Hon'ble the Legal Remembrancer of constructing houses with public funds, and I fear with the Hon'ble the Chief Secretary that any Government provision made in this way would be considered by Munsifs themselves to be too costly. As all of you know, our Public Works Department builds with solidity and not with cheapness, and if we have to charge so large a sum as will cover the cost of building a residential house which will be suitable and comfortable, the rent which will be fixed will be very much higher than Munsifs are in the habit of paying and much more than they would like to pay. This is one alternative, and even if this alternative is adopted, the work cannot be carried out at once, but will have to be done somewhat gradually, because out of the 289 Munsifs shown in the statement given last week, we may assume that about 200 of those are at outlying stations, and the cost of building houses for them, taking it at Rs. 5,000 per house, would come to about ten lakhs of rupees, so that that cannot be done at once. The other alternatives suggested were that Munsifs should take advantage of the provision which already exists under which any officer can apply for an advance to build his own house, it

[*The President.*]

being understood that the High Court should, in their administrative capacity, see that a due value should be put upon it, and that the incoming Munsif should be compelled to take it at a fair rent; or that we should use our efforts and get capitalists or zamindars and other wealthy people in the mufassal to build houses for Munsifs, and having fixed a fair rent, we should in the same way issue orders that the Munsif should occupy that house and pay the rent fixed. These are the only three ways in which I consider it possible to meet the difficulty, and we are awaiting the advice of the High Court as to which of these courses we should pursue.

"Then, as regards 'Excise'. I would only mention one point in addition to what the Hon'ble the Financial Secretary has said as to the cause of the large increase of revenue from spirits. There are two ways to account for this increase in the revenue—first, by purchasers paying larger fees, and, secondly, that more liquor was consumed. If Hon'ble Members will read the Resolution on the last Excise Report, they will see that the Government took care to point out, and were able to show, that in almost every case where there had been an increase in revenue it had been accompanied by a relative decrease in quantity, so that the increase in revenue had not been obtained by an increase in the quantity of liquors and intoxicating drugs, but by the duty producing a larger revenue and making it dearer to consumers. I may mention some of the steps we took to raise the price.

"The still-head duty on rum, which is largely consumed in the country, was raised by one rupee, and the increase of revenue from this source was about one and-a-half lakhs, and again the several classes of license fees for the wholesale and retail sale of liquors in Calcutta were considerably raised, and from this also increased revenue of about half-a-lakh was gained. I am as confident as it is possible for any one to say who speaks without premeditation on a subject which has largely occupied his mind, but without the figures before me, that the increase in the revenue to which the Hon'ble Member alluded has not been due to an increase in the sales of liquors, but to an enhancement of its price.

"I will only add this, that I am entirely opposed to a large increase of Outstills, and I strongly hold to the propriety of the principle of the manufacture of spirits at sadar distilleries and the imposition of still-head duties upon it,

[*The President.*]

and that, although there may be arguments for establishing Outstills in outlying districts and scattered places, I am not inclined to extend the number of Outstills to the prejudice of system of distilleries at head-quarters.

"With reference to the request that had been made by the Hon'ble BABU SURENDRANATH BANERJEE for more detailed information than that given in the budget statement, I shall be glad if he will see the Hon'ble the Financial Secretary and look over what information exists in the office, and if there is anything which is likely to be really useful or meet the wishes of members in general, it will be put before him. But I entirely deprecate anything which would lead to an increase in the labour of writing or in the cost of printing, because, as a matter of fact, information of a most extraordinarily minute and complete character exists in the book issued by the Financial Department, called the Yellow Book, to which I refer the hon'ble member as a standard source of information of the actual expenditure of the country at large, showing that of the whole of India and of each province under very minute heads. When I was President of the Finance Committee I relied almost entirely upon that book for the information we required, and I found that almost everything necessary to examine the state of the finances was to be found there. But that represented past and completed expenditure. Similar information is not supplied as to the details of estimated figures, but I think the Council will agree with me that the Government are wise in declining to take so much labour and expenditure with their estimates, and should incur it only when the books for the year are closed and the expenditure known with absolute certainty.

"The remarks which were made by my hon'ble friend, MR. LYALL, upon the police management were useful remarks made by an officer of great experience, and anything that he said on this subject must receive careful attention. They shall be laid before the Inspector-General of Police, and considered in the Judicial Department, and anything that the Government can do, especially with regard to the suggestion which he made regarding the employment as Court Inspectors of men who are still intelligent and capable, but who are physically inactive, shall certainly be considered with all the attention the subject deserved. With reference to the suggestion of the same hon'ble member that police officers should be appointed to the Subordinate Executive

Service, I may say that we have here an example of our old friend 'the better is the enemy of the good.' The Government has adopted a better policy, namely, the restricting the appointments to the Subordinate Service by competitive examinations, and in this way we have obtained, by rules the credit of which is chiefly due to the Hon'ble the Chief Secretary, an excellent body of recruits—quite the flower of the educated young men in the Province, all of whom have graduated, many of whom are M.A.'s and B.L.'s of good families, and sons of men who have either served the Government honourably and well, or hold good positions in the country. These rules were rigidly adhered to and rightly so, and I am quite sure that the policy has been a wise and successful one, and you will see how difficult it would be to deviate from this policy, and make what are called special cases: it will be like the letting in of water. Once make a special case of Police Inspectors who cannot pass the examination, and we shall receive applications from all quarters, and I therefore quite support the rigidity with which the Hon'ble the Chief Secretary has refused applications of this kind. But the Hon'ble MR. LYALL has omitted to notice that we have done more than SIR RIVERS THOMPSON did by promoting Inspectors to the covenanted grades of the Police, two of them being raised to Assistant Superintendents of Police in every three years. The position thus gained in their own service carries with it higher pay than by promotion to the executive service, and I think it will tend more to the good of the Police and to the Executive Service than if we were to revert to the old rule which was good at the time, but which is inferior to the policy now adopted.

"There is only one point on which I can add anything to what has been said with regard to Stationery and Printing. Every reform of this kind is accompanied with a certain amount of loss of efficiency. One of the chief causes of the reduction of expenditure has been a strict adherence to the rule that if an improvement is made in the form of a return, it should not take effect at once as a zealous officer would, no doubt, desire it should take effect, but the carrying out of the improvement should wait until the printed copies of the old form were exhausted. On the one hand, it will be seen that a saving is effected by first using copies of the old form in stock, while others may contend that the loss in efficiency by the postponement of the improvement is greater relatively than the gain effected by utilising the forms already in

stock. Taking the strong economical view I have always taken, I am inclined to think that the carrying out of the reform should, in such a case, be postponed. Many reforms which are in themselves good are better for being postponed, and gradually introduced, and I think we are right in doing so, even though it has caused a slight postponement of the improvement in administrative procedure, which is desired.

"I will only trespass upon your attention further by remarking on one other subject, and I must apologise for doing so. My chief reason is that I spoke on this subject two days ago, when the Reporters were so tired in the course of a long debate that what I said failed to reach the public ear, at any rate in the manner in which I wished it to reach the Public. At last Thursday's meeting of the Viceregal Council I referred to the speech made by the Right Hon'ble MR. FOWLER, and the optimistic view which he took of the state of the Imperial Finances. He went on to show that while the whole of our public debt was over 200 millions, almost the whole of that debt was covered by our assets in the form of railways, canals, and public works of that kind. No sooner had he said that than an answer was put in by a well-known English writer who holds a very influential position in England as the Editor of the *Investor's Review*, who replied:—'What nonsense are you talking? Do we not find that in every bankruptcy the assets are greater than the liabilities, but the man is a bankrupt because his assets cannot be realized?' I confess I saw with great regret how greedily that was taken up by a certain class of Journalists in the country as an effective answer to what the Secretary of State had said, and, as an illustration of the futility of the reply, I drew attention to the railway with which we are most concerned, and to which more than anything else our good financial position is due, namely, the Eastern Bengal State Railway. I had then with me, as I have now, the accounts of that Railway for the last five years, and I showed that the net receipts of that Railway had risen from 67 lakhs to 70 lakhs in 1893-94, and to 87 lakhs estimated in the present year. The capital of that Railway has, during the same period, increased from 10 to 10½ crores, while the net returns on that capital have increased from 5·1 per cent. to 8·2 per cent. Now you all, as practical men and men of business, know very well that a working concern of that kind which brings in 8·2 per cent. per annum is an extraordinarily

investment. If we went into the market and wished to sell that Railway, we could get not ten or ten and-a-half crores, but almost double that amount. And therefore, I assert that our assets in the form of railways, and canals and public works, so long as they produced returns of that kind, are not merely equal to our liabilities as the Secretary of State has said, but are worth much more than the money actually spent upon them,—worth far more than would cover the whole of the public debt in India. I can hardly conceive how a gentleman in the position of the Editor of a great financial paper in England came to utter a criticism like that, except by an explanation which impugns either his intelligence or his honesty.

"I will only say, in conclusion, that I congratulate myself, and I congratulate the Council, upon the turn which the debate has taken to-day. It has not only been eminently useful and practical, but I am satisfied that it will raise the reputation of this Council in the eyes of the Provincial Councils of India in general."

The Council adjourned to Saturday, the 6th April, 1895.

GORDON LEITH,
Assistant Secretary to the Govt. of Bengal, Legislative Department.

CALCUTTA;
The 29th April, 1895.

B. 963—300—4-5-95.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 *and* 1892.

The Council met at the Council Chamber on Saturday, the 6th April, 1895.

Present:

The Hon'ble Sir Charles Paul, K.C.I.E., Advocate-General, *presiding.*
The Hon'ble H. J. S. Cotton, C.S.I.
The Hon'ble Sir John Lambert, K.C.I.E.
The Hon'ble D. R. Lyall, C.S.I.
The Hon'ble C. E. Buckland.
The Hon'ble T. D. Beighton.
The Hon'ble H. H. Risley, C.I.E.
The Hon'ble R. C. Dutt, C.I.E.
The Hon'ble Rai Durga Gati Banerjea Bahadur, C.I.E.
The Hon'ble Surendranath Banerjee.
The Hon'ble L. Ghose.
The Hon'ble Maulvi Serajul Islam Khan Bahadur.
The Hon'ble J. G. Womack.
The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.
The Hon'ble C. E. Smyth.

NEW MEMBERS.

The Hon'ble Mr. Risley and the Hon'ble Rai Durga Gati Banerjea Bahadur took their seats in Council.

LICENSES FOR ARMS.

The Hon'ble Babu Surendranath Banerjee asked:—

Will the Government be pleased to lay on the table the report of the Commissioner of the Dacca Division, with reference to the question asked in Council on the 23rd March last, regarding licenses granted for the carrying of arms? Is it the case that licenses granted by the Magistrate of Dacca permit the carrying of arms only in the village or the town where the holder of the license may happen to reside, and not throughout the whole district? Does the

Government approve of this restriction? If not, will the Government be pleased to direct that the restriction be withdrawn, and the holder of the license be allowed as before to carry arms throughout the whole district, and with the permission of the Commissioner throughout the whole Division?

The Hon'ble MR. COTTON replied:—

"It appears that this subject was under enquiry before the Hon'ble Member's original question was put, the Commissioner of Dacca having on the 12th January last asked the Magistrate of Dacca his reasons for restricting a license to carry arms to the limits of the village within which the licensee resides.

"The Magistrate of Dacca explained on the 3rd February that the great majority of persons who ask for gun licenses state that they require guns either for the protection of their homes from robbers or of their fields from pigs and deer. He considers that for such persons a license to use a gun within the limits of their own village is sufficient, and that it is undesirable to allow them to carry their guns round the country with the danger of their being used in agrarian disputes. He adds that the limitation of the license to a village is not enforced in the case of zamindars, whose interests extend over several villages, or of travelling traders or persons of position generally.

"The Lieutenant-Governor does not think that the action of the Magistrate as thus explained has been injudicious, and he is not aware that any complaints have been locally made, but he has authorised the Commissioner, if any application is made to him, or if he thinks it necessary to interfere in any particular case, to extend the operation of any such license to a larger area than the village or to the whole district.

"When a gun license is countersigned by the Commissioner of a Division it is valid not in the Division only, but throughout all the districts in Bengal which are subject to the Lieutenant-Governor."

THE LAND RECORDS MAINTENANCE BILL.

The Hon'ble MR. BUCKLAND in presenting the Report of the Select Committee on the Bill to provide for the maintenance of Records of Rights in Bengal, and for the recovery of the cost of Cadastral Surveys and Settlements, said:—

[*Mr. Buckland; Mr. Risley.*]

"I do not propose to make any remarks on the present occasion, but will reserve what I have to say until the next meeting of the Council. I will only mention that a copy of the Report was sent to the Hon'ble THE MAHARAJA OF DARBHANGA, who has left Calcutta, and that this morning I received a telegram saying that he authorised me to sign the Report on his behalf, reserving to himself the right of moving amendments."

THE CALCUTTA PORT ACT, 1890, AMENDMENT BILL.

The Hon'ble MR. RISLEY moved for leave to introduce a Bill to further amend the Calcutta Port Act, 1890. He said:—

"It will be convenient that I should explain at the present stage the provisions of the Bill and the nature of the alterations it will make in the Act. The Act itself is a consolidating Act which incorporates the old Act of 1870, gives certain powers to the Port Commissioners, lays down their constitution, and gives them all the powers which are requisite for the working of the Port. The amending Bill, which I have the honour to introduce, contains two kinds of sections: *first*, it contains amendments, which may be described as ordinary amendments, embodying those changes which experience in the working of the Act has shown to be necessary. Some little time ago the question of amending the bye-laws of the Port Commissioners arose, and those bye-laws were sent for opinion to the then acting Advocate-General. He held that in some respects the bye-laws went beyond the section of the Act which gives the power to pass bye-laws. That section belonged to the original Act, X (B.C.) of 1870, and had been repeated, unaltered, in the more recent Act of 1890.

"The necessity for amending the Act having arisen out of these bye-laws, a Committee of the Port Commissioners was appointed to look through the entire Act and see what other amendments were needed, and on their proposals were based the sections of the Bill which I have described as ordinary sections. With respect to these sections there is no urgency in point of time: and if they were not passed till two or three months hence, no practical difficulty would arise. But besides these there is another class of sections, in respect of which considerable urgency may be claimed. These sections are intended to relieve the very important petroleum trade from certain legal difficulties with which it is now

beset—difficulties which are causing considerable hardship, and may cause something approaching to actual embarrassment. Fortunately for the necessity of passing an amending Act quickly, the ground has been very thoroughly cleared for us by the action which has been taken by the Port Commissioners and the Chamber of Commerce. Negotiations went on between the two bodies for some time last year; a representative Committee was appointed by the Chamber of Commerce, which went into the matter very thoroughly, and all the questions which arose were discussed between them and the Port Commissioners, and an agreement was arrived at. The best legal advice was obtained, and since then action has actually been taken and money has been spent by the Port Commissioners on the faith that their action would be legalised, and this we are pledged to do as early as possible.

"I will now go through the amending sections of this Bill as briefly as I can, taking first those which are in the nature of ordinary amendments, and then taking the sections which are specially framed to relieve the petroleum trade.

"Section 2 of the Bill corrects a verbal error in section 13 of the Calcutta Port Act, III (B.C.) of 1890. It will be seen that section 12 of the Act gives power to the Local Government to grant leave of absence to the Vice-Chairman and to appoint a person to officiate as Vice-Chairman during such absence on leave, and sub-section (*2*) of section 13 enacts that 'the person appointed under this section to act for the Vice-Chairman' shall have certain powers; but this reference should be to the preceding section 12, under which a person is appointed to officiate as Vice-Chairman, and not to section 13; so that the amendment to be made in sub-section (*2*) of section 13 is a purely verbal amendment.

"The next section we have to deal with is section 32 of the Act, which confers upon the Port Commissioners, among other things, the power of fining their officers and servants. It is proposed to form these fines into a fund from which it should be open to the Commissioners to grant compassionate allowances to their officers and servants, and to utilise the same for purposes other than those which are contemplated by section 57 of the Act. It has been held by Counsel that all sums collected as fines by the Port Commissioners would be merged in the general revenues of the Port, and could not be formed into a fund such as that which is now contemplated.

"The 4th section of the Bill amends sub-section (*2*) of section 35 of the Act, the wording of which has been slightly altered. The only point, however, which arises is that the Port Commissioners wish to take power to carry passengers in their tramways, which, as the section stands, they have no power to do now. It is not contemplated to initiate a large passenger service, but under certain circumstances the Port Commissioners may consider it desirable to take passengers which they have no power to do now.

"I will for the present pass over section 5 of the Bill, which I shall refer to later on in connection with the sections of the Act relating to the trade in petroleum.

"Section 8 of the Bill amends section 106 of the Act, which deals with passenger boats which ply for hire within the Port, that is to say, boats, steam-ferries and the like which have been registered under the Act. Section 106 empowers the Port Commissioners to levy tolls on such vessels, but for a long time past the Commissioners have been levying charges for certain services, such as surveying, issuing licenses, painting numbers, giving tickets, and so forth. It has been pointed out by Counsel that the section is limited to the levy of tolls on such boats, and does not include charges for such services; it is therefore desirable that the existing practice should be legalised.

"The next sections of the Bill, 9 and 10, amend sections 108 and 109 of the Act. These sections provide for the imposition of additional tolls to meet a deficit in the income of the Port Commissioners which is liable to arise, and which has in fact arisen by reason of their liability to the payment of interest upon their debt; and the way in which the deficit has hitherto been met is by the imposition of a uniform rate of 4 annas per ton on all goods landed and shipped in the Port. The Port Commissioners represent that this uniform rate of charge is not a convenient arrangement, that it is liable to bear hardly on some articles of Commerce and nominally upon others; they therefore want full power to distribute this burden equitably according to the character of the goods which are landed or shipped. They accordingly propose to take power to levy additional, general, or differential rates of toll with reference to all goods, according to weight, measurement, number of articles, value, and so forth, and, if necessary, to distinguish between imports and exports. The section looks a somewhat complicated one, but I understand that it has been very carefully considered and drafted by MR. WOODROFFE, which, I think, should afford a sufficient guarantee of its correctness.

"Section 16 of the Bill, amending section 126 of the Act, is the section empowering the Port Commissioners to make bye-laws. As I said in the first part of my statement, when these bye-laws came up, it was found that a great many of them were not covered by the sections of the Act, and the Advocate-General proposed that the section should be amended in the manner suggested. The second part of the section, sub-section (*b*), has reference to the petroleum sections.

"This disposes of the first class of amendments, ordinary amendments with reference to which, as I said, there is no claim to urgency. These in themselves are quite sufficient to justify legislation, but they would not warrant my asking for a suspension of the Rules of Business. The sections relating to petroleum stand on quite a different footing. They authorise the Port Commissioners to provide facilities for the petroleum trade at Budge-Budge. When the Budge-Budge warehouses were originally started, I think in 1888, they were treated in effect as bonded warehouses. Importers were allowed to put their cases of oil into these warehouses, and to keep them there until they wanted them for delivery to purchasers, and the duty was only collected at the time when the goods were taken out for sale. The time during which petroleum was kept in these warehouses was more than what was allowed in the case of ordinary bonded warehouses, where goods cannot be kept for indefinite periods of time; but here there was no limit of time. About this time last year the Collector of Customs discovered that the system of bonding petroleum at Budge-Budge was illegal; that the Budge-Budge warehouses were not a 'bonded warehouse,' and that the procedure then existing was altogether bad in law. The Collector accordingly enforced the law, and the result was that duty had to be paid on all goods brought into these warehouses within four months of their being landed. This caused considerable hardship to the importers of petroleum, because the trade in petroleum having been conducted on the assumption that oil could be bonded for an indefinite period, prices were adjusted to that state of things. Obviously you can sell cheaper if you can spread the interest upon your money over a long period of time. About the same time there was a very remarkable increase in the imports of petroleum; an enormous quantity of oil was brought in, and there was no warehouse accommodation. The Port Commissioners had to direct where the oil should be stored; and, for want of room, large quantities of it were stacked in the

open, and I imagine there must have been some considerable damage done. Not very long after that a special Act was passed in this Council to relieve the Port Commissioners from the legal liability which, it was understood, attached to them in respect of the landing and storing of petroleum, and that Act was passed at a single sitting of the Council. The difficulties which had arisen in connection with the petroleum trade were taken up by the Chamber of Commerce, who appointed a Special Committee to consider and report on the question. The report of this Special Committee was adopted by the General Committee of the Chamber, negotiations took place with the Port Commissioners, and an agreement was come to on the subject. It was agreed that in future, instead of importers landing petroleum themselves, the Port Commissioners should land all petroleum. Not only should they land it in the technical sense, which, I understand, is merely receiving it after it is put over the vessel's side, but they should also undertake the process known as 'stevedoring;' that is to say, they should send men into the hold and pass it over the side of the vessel. Importers, it was said, were not always very desirous of landing petroleum quickly, and it was desirable to have the means of putting pressure upon them. It was also settled that the Port Commissioners should not do the work themselves, but should do it by the agency of Contractors, or at any rate that they should have the option of doing so; that bonded warehouses should be provided for the storage of petroleum; that the oil should be stored there as long as the Commissioners thought fit; that the Port Commissioners should give a security bond to the Customs for any duty due on imports of petroleum; that they should issue warrants specifying that so much petroleum had been received, and that such warrants should pass from hand to hand when the goods were transferred; finally—and this is an important condition—it was agreed between the Port Commissioners and the Chamber of Commerce that the Commissioners should be exempted absolutely from liability for damages arising from fire, however caused; while they should be liable for loss arising from deterioration, and so forth, only so far as it could be shown to arise from the negligence of the Commissioners' servants. The agreement thus arrived at was understood to be satisfactory to both parties. The Port Commissioners were at first under the impression that no legislation would be required, except for the purpose of creating bonded warehouses. They thought all the other measures contemplated could be carried out under

the existing law, and they acted on that supposition. Subsequently, however, they found that the landing of petroleum by them and its custody also required amendment of the law.

"It will now be convenient if I take up in order the sections which refer to the petroleum trade, and in the course of my explanation I shall be able to show what the legal questions are which have to be met. The first section which is intended to relieve the petroleum trade is section 5 of the Bill amending section 90 of the Port Act of 1890. This section will in fact enable the Port Commissioners to land all goods through Contractors, and in the special case of petroleum, but not in the case of other goods, it will enable them to do what is known as 'stevedoring'. Next come sections 6 and 7, which amend section 104 of the Act, and they add a fresh section—104A. Under section 104 of the Act, the Port Commissioners have only authority to employ Contractors or other outside agency to land cargo from boats or vessels which are known as inland vessels, and the object of the new section is to extend this power to all vessels, including sea-going vessels. Obviously it is necessary to make this change, as the vessels by which petroleum is imported are all sea-going vessels.

"The next petroleum sections are sections 11 to 14 of the Bill, which amend sections 113 to 116 of the Act; and here come in the legal difficulties to which I have referred. I stated just now that the Port Commissioners were originally under the impression that, as far as the landing and custody of petroleum are concerned, no legislation is required. They thought they would simply have to waive certain privileges conferred upon them by sub-section (*2*) of section 113, which provides that 'if any owner, without any default on the part of the Commissioners, fail to remove any goods from the premises of the Commissioners within two clear working days from the time of landing, such goods shall remain on the premises at the sole risk and expense of the owner.' It was explained that the legal effect of the section is to relieve the Commissioners of any liability which attaches to them as Warehousemen. They cannot incur liability as Warehousemen for any period exceeding two days. The view taken by the Port Commissioners acting upon legal advice was that this was a privilege attaching to them, and therefore one that they could waive. They said in effect there is no necessity to legislate; we will waive our privilege and take your petroleum. But the view subsequently taken by Counsel was that this is not enough, that it was a privilege conferred upon them by way of trust, and that the Port Commis-

sioners, as representatives of the public, were bound to strip themselves as soon as possible of their liability as Warehousemen, and therefore they could not get out of the position affirmed by the Act. Acting on the assumption that they could take action without legislation, the Port Commissioners have spent Rs. 1,50,000, and they have committed themselves to an expenditure of Rs. 3,00,000 for extension of their warehouses, and since the 15th of January they have been taking in large quantities of petroleum, although, technically speaking, they are not entitled to do so under the law; and it is clear that their position must be legalised as soon as possible.

"The next set of sections begins with section 15, which introduces four new sections, 122A to 122D. These sections provide, first, that, with the consent of the Local Government, the Port Commissioners may, by notification in the *Calcutta Gazette*, declare any warehouse belonging to the Port Commissioners to be a bonded warehouse for the purposes of this Act. I understand that under the Customs Act, when such a notification has been made, all the conditions which arise with regard to bonded warehouses will apply to such warehouse. Section 122B empowers the Commissioners to store goods in such warehouses as long as they think fit, but in the case of petroleum it frees them absolutely from any liability for loss by fire, however arising, or for any deterioration or diminution in quantity by leakage or otherwise, unless caused by negligence of their servants. This was settled by agreement between the Port Commissioners and the representatives of the trade in petroleum. Section 122C authorises the Port Commissioners to give a bond for payment of the import duty due on goods stored in their bonded warehouses or for the due exportation of such goods, and when such security has been given, no further security shall be required by the Customs. Section 122D enables the Port Commissioners to issue warrants in a form laid down by the Act, which shall be negotiable by endorsement, and shall entitle the persons to whom they may have been endorsed to receive delivery of the goods. These sections contain provisions which I may say are absolutely necessary to carry out the agreement come to between the Chamber of Commerce and the Port Commissioners. The Commissioners, so far as they could undertake to do so, undertook to obtain legal warrant for the construction of bonded warehouses for the convenience of the trade, and the trade, I understand, counted upon this, and they are certainly, as far as I can judge from the course of the negotiations, entirely justified in looking to the Legislature to restore what was the ordinary practice in consequence of which the trade

in petroleum grew up; and if there is any delay in passing this Bill through the Council, there will be great disturbance and considerable embarrassment to the trade.

"I might remind the Council that last year they took very speedy action to relieve the Port Commissioners from certain liabilities under which they lay in consequence of the state of the then existing law, and I think they are equally bound on the present occasion to pass any measure which may be necessary, having regard to the agreement which has been come to between the representatives of the petroleum trade and the Port Commissioners. Fortunately there is the less difficulty in passing this Bill, inasmuch as in regard to those portions of the Bill which may possibly be considered contentious, the interested parties are agreed, the best legal opinion has been taken, and the Bill has been actually drafted in accordance with that opinion."

The Hon'ble MR. SMYTH said:—"I beg to support the motion proposed by the Hon'ble MR. RISLEY.

"I may mention that in June last year, the Chamber of Commerce appointed a Sub-Committee, representing the various interests connected with the kerosine-oil trade, to enquire into the working of the kerosine-oil depôt at Budge-Budge.

"For some considerable time it was felt by those connected with this trade that the working of the depôt at Budge-Budge was not wholly satisfactory. On several occassions ships and steamers loaded with kerosine-oil had to be delayed outside the limits of the Port, there being no accommodation for them at Budge-Budge. The mercantile community thought that the accommodation should be increased. The Port Commissioners showed that full advantage was not taken of the accommodation already provided. It was then decided by the Chamber of Commerce to appoint the Sub-Committee I have before mentioned. The Sub-Committee reported to the Chamber, who addressed the Port Commissioners on the state of affairs at the Budge-Budge depôt, pointing out that the arrangements for working the discharge, loading and storing of kerosine-oil were extremely unsatisfactory, and that a radical change should be made. And the Chamber pointed out that the only satisfactory solution of the difficulty, as far as they could see, was for the Port Commissioners to become responsible for the loading, unloading and delivery of the oil. In other words, for the whole working of the depôt at Budge-Budge precisely in the same manner as

they are responsible for the unloading of goods at the jetties. And they further urged that it was necessary for the requirements of the trade that the Budge-Budge depôt should be constituted a bonded warehouse.

"It is to enable the Port Commissioners to carry out the recommendations of the Chamber of Commerce that this Bill is now introduced into Council. The matter is an urgent one, as large shipments of oil are shortly expected in Calcutta. I would, therefore, cordially support the amendment of Act III of 1890."

The Hon'ble MR. WOMACK said:—"I also wish briefly to support this motion. Speaking as a member of the Port Commission, I know that the provisions of the Bill before the Council are extremely desirable and extremely urgently needed. They have been very carefully considered both by a Sub-Committee and by the full body of the Commissioners, and the amendments have been all carefully drawn by the best legal advisers, so I trust that no time will be lost in passing the Bill into law."

The Motion was put and agreed to.

The Hon'ble MR. RISLEY also applied to the President to suspend the Rules of Business to enable him to introduce the Bill, and to move that it be read in Council.

The Hon'ble THE PRESIDENT having declared the Rules suspended—

The Hon'ble MR. RISLEY introduced the Bill and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble MR. RISLEY also moved that the Bill be referred to a Select Committee consisting of the Hon'ble MESSRS. LYALL, WOMACK and SMYTH, the Hon'ble RAI DURGA GATI BANERJEA and the Mover.

The Motion was put and agreed to.

The Council adjourned to Saturday, the 13th instant.

CALCUTTA;
The 29th April, 1895.

GORDON LEITH,
Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Reg. No. 75G—300—30-4-95.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892.

The Council met at the Council Chamber on Saturday, the 13th April, 1895.

Present:

The Hon'ble Sir Charles Alfred Elliott, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The Hon'ble Sir Griffith Evans, K.C.I.E., *Offg. Advocate-General.*

The Hon'ble Sir John Lambert, K.C.I.E.

The Hon'ble D. R. Lyall, C.S.I.

The Hon'ble J. A. Bourdillon.

The Hon'ble C. E. Buckland.

The Hon'ble T. D. Beighton.

The Hon'ble H. H. Risley, C.I.E.

The Hon'ble R. C. Dutt, C.I.E.

The Hon'ble Rai Durga Gati Banerjee Bahadur, C.I.E.

The Hon'ble Surendranath Banerjee.

The Hon'ble L. Ghose.

The Hon'ble Maharaja Sir Luchmessur Singh Bahadur, K.C.I.E., of Darbhanga.

The Hon'ble Maulvi Serajul Islam Khan Bahadur.

The Hon'ble J. G. Womack.

The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.

The Hon'ble C. E. Smyth.

NEW MEMBER.

The Hon'ble Sir Griffith Evans took his seat in Council.

PROMOTION OF JOINT-MAGISTRATES TO DISTRICT JUDGESHIPS.

The Hon'ble Maulvi Serajul Islam Khan Bahadur asked:—

Whether it is a fact that, under the existing system, Joint-Magistrates of a few years' standing and with no experience of civil work are promoted to the office of District Judges, and have to hear appeals against the decisions of Subordinate Judges of long standing and varied experience? Whether the working of the system is found satisfactory?

[*Mr. Risley; Mr. Buckland.*]

The Hon'ble MR. RISLEY, in the absence of the Hon'ble MR. COTTON, replied:—

"All the permanent Judges in Bengal are senior officers and vary in standing from fifteen to thirty-four years' service. But it is occasionally found necessary to appoint junior officers to officiate as District Judges during the absence of the permanent incumbent on leave or deputation, and acting Judgeships for temporary periods are therefore held in some cases by officers of only eight or nine years' service who have not yet made their choice between the Judicial and Executive branches. The Lieutenant-Governor is always careful to select officers as senior as possible to act as Judges, and proposals which have been made to strengthen the hands of Government in this direction, by postponing the date at which the selection of the Judicial or Executive line is made, are now under consideration."

THE LAND RECORDS MAINTENANCE BILL.

The Hon'ble MR. BUCKLAND moved that the report of the Select Committee on the Bill to provide for the maintenance of the Records of Rights in Bengal and for the recovery of the cost of Cadastral Surveys and Settlements be taken into consideration in order to the settlement of the clauses of the Bill. He said:—

"I intimated at the last meeting of the Council that I would reserve the observations which I had to make till the present occasion, so that Hon'ble Members might have time to read the report of the Select Committee and make themselves better acquainted with the provisions of the Bill. It therefore now devolves upon me to explain briefly what is stated in the Committee's report. But before doing so, I wish to offer some remarks on the speech of the Hon'ble the Maharaja of Darbhanga at the meeting of the Council, which was held on the 9th of March last, and which was published for the first time in the Calcutta Gazette of the 10th instant. When his remarks were made in Council on the 9th of March, I replied at the time that I was not able to hear all that the Hon'ble Member said, and that I would reserve to a future occasion such answers as I might have to give to what was then said. The objections which were taken by the Hon'ble Member to the Bill, have, as he will find, been met in several very important particulars. The Hon'ble the Maharaja complained that there were

two omissions in the early portion of the Bill to which he felt he should call attention. The first of these omissions was, that there was no provision for the procedure to be followed by the Registrar of Mutations. I can say now that we have provided amply sufficient procedure for the Registrar of Mutations to follow. We have in doing so adopted mainly the provisions of the Indian Registration Act, III of 1877. The next omission to which the Hon'ble the Maharaja drew attention was the omission of any provision for abolishing patwaris as they now exist under Regulation XII of 1817. That was no doubt a very fair criticism for the Hon'ble the Maharaja to offer on the Bill. At that moment our tongues were tied and we could say nothing upon this point, but since then, as is known to the Council, there have been published in the Calcutta Gazette of the 27th March last, some forty pages of printed correspondence between this Government and the Government of India with regard to the repeal of Regulation XII of 1817, which is the law relating to patwaris. Any one who has read the papers which are contained in that correspondence will see at a glance that any hopes held out by the Lieutenant-Governor to the landed interests in Bihar that the patwaris would be abolished have, so far as this Government is concerned, been amply redeemed by the efforts we have made to get this Regulation repealed. The patwari has been there described in various terms. He has been termed a pestilent fellow, a political pawn, and a potential nucleus of a village community. His merits and his shortcomings have been set out and regarded from every point of view. He has perhaps not been aware of all that was being written about him. If he had been, he would, I think, have been astonished to find that he had become a person of so much importance. It would not be becoming on my part on this occasion to offer one word of comment on this correspondence. A decision has been arrived at by the Government of India on a full consideration of all that has been said for or against the patwari, and I take it that it is becoming to this Government, as it is their duty, to bow loyally to that decision. But this is a sufficient explanation, I venture to think, of the omission to which the Hon'ble the Maharaja drew attention in his speech on the 9th March. The Hon'ble Member also on that occasion suggested that the Rules made under the Act, before being put into force, should be published in the Calcutta Gazette for a period of at least three months. We have endeavoured to meet his wishes by providing in the present revised Bill that the Rules published under the Act should, in accordance with section 190 of the Bengal Tenancy Act, be published for one

month before they are confirmed. The Hon'ble Member also drew our attention to section 16 of the original Bill in which we provided for a penalty on persons who fail to do their duty by giving notice of transfers or successions, and said that he thought that liability to such penalty should be safeguarded by some such words as 'voluntarily' or 'negligently.' It will be found that the words 'voluntarily' or 'negligently' have been introduced into section 24 of the Bill as now revised. The Hon'ble the Maharaja also drew attention to section 21 of the original Bill, an important section, which provided for payment of the Cess by tenure-holders and raiyats and for its recovery through zamindars. The objections taken by my hon'ble friend were primarily that it was a distinct violation of the conditions of the Permanent Settlement. I venture to think that that is an objection which has long since been disposed of, but we have more than met the Hon'ble Member's wishes by striking out all reference to a Cess from the Bill. As I said in Council on a previous occasion, there is a bill to be paid, and all that has to be done is to settle the simplest way of paying it. There is no occasion now to call it a Cess, because we have, in deference to the wishes of the proprietary interest in the land which my hon'ble friend so ably represents, struck out all the provisions of the original Bill for collecting the charges through the zamindars. These are the main criticisms which the Hon'ble the Maharaja levelled at the Bill at the meeting of Council to which I have referred, and I think I may claim that steps have been taken to meet his wishes to a great extent.

"With these preliminary remarks I will now turn to the report of the Select Committee. We purposely drafted the report fully and amply, and I think we have dealt with nearly every section of any importance; it will not therefore be necessary for me to take up the time of the Council by going through all the sections of the Bill. The main changes which have been made in the Bill, if I may so say, consist in making certain omissions. We have, for instance, omitted sections 4 and 5 of the original Bill, which provided additional facilities for the operation of the Land Registration Act. The idea of Government was, as advantage was not taken of the benefits of the Land Registration Act as generally and completely as might have been, to afford facilities for the better carrying out of that Act by the multiplication of small registration offices; but it has been on the whole thought better to drop those provisions, and the result therefore is that this Bill now assumes the form of providing for the maintenance of the record of tenant rights and not of proprietary rights also.

"We have also omitted section 8 of the original Bill which provided for proprietors of land being called upon to state whether they omitted or refused to admit transfers which it was proposed to register. That section has been omitted in deference to the views of landlords whose interests my hon'ble friend the Maharaja of Darbhanga represents.

"We have also struck out section 9 of the original Bill, which provided for the presumptive force to be given to mutations in rent suits. It has been thought better to leave the Courts to decide what force entries in these registers should have. It would of course be very difficult to say beforehand what force they should have. That they will have some force in evidence is certain, having regard to section 35 of the Evidence Act, as they will be entries in a public register and therefore they will be relevant facts.

"We have also struck out the old section 13. I said so much on the last occasion on this point that I need only mention that that was the section which provided that the Civil Courts should forward to the Sub-Registrars memoranda of decisions arrived at by the Courts affecting rightsin land.

"These are the chief changes which we have effected by way of omissions.

"We have also introduced some changes of importance in the Bill which I will briefly recapitulate. From paragraph 7 of the report of the Select Committee it will be seen that we have provided that notices of transfers may be received after the expiry of four months. Notice would not be absolutely shut out by that period. The proposal now is that, if a notice of transfer is not given within four months, then a somewhat higher fee must be paid, and the person giving the notice will be liable to a penalty; but here again we propose that he shall be saved from being penalised if he comes forward and gives notice of the transfer at any time before proceedings are instituted against him. We have also provided that a notice given by any one person releases all other persons from giving notice of the same transfer or succession, and that registration under the Indian Registration Act of an instrument transferring a tenant right releases all persons from giving to the Registrar of Mutations separate notice of the same transfer. I think that this will be appreciated as a very reasonable concession to the public convenience.

"We have also in section 15 of the Bill now before us provided, as far as one can provide, for continuity in the registration of mutations. The marginal note to this section is:—'Procedure when transferor's name not in record of rights.' The idea is that we should do our best, by notice in the village and by

beat of drum, to get hold of the alleged transferor, and if nobody comes forward to deny that the alleged transferor or deceased person through whom succession is claimed was at the time of the alleged transfer in possession, then the name of the alleged transferor will be inserted in the register of mutations. By this means we hope, as far as possible, to maintain continuity of registration. It will be a very difficult thing to do, and possibly there may be blanks in the register, but we have endeavoured to do all we can in the matter.

"We have also dealt in section 23 of the present Bill with what have been called the automatic sanctions of the measure. In dealing with these sanctions we have endeavoured to make it as easy for both parties as we can, and by an amendment, of which notice has not been given, we propose to make the penalty less severe to persons failing to do their duty under the section; or rather we propose to give more opportunities for getting off the penalty. We have provided that a person who would otherwise lie under a disability is to be freed from the disability if he can show that he has given the notice. We do not now make it necessary for a party to prove that the transfer has actually been registered; we exculpate him if he has given notice and done all that was in his power to do. We have also at the end of section 23 provided that the Court in which any suit is filed shall give the defendant sufficient time to enable him to give such notice. In fact, as the section now stands, and as I propose to further amend it, sufficient opportunities will be provided for any person who is at all anxious to do his duty under the Act to escape without being penalised. But we maintain, and we must maintain, that there must be some pressure on the parties to do what is required, and as much concession is being made as is compatible with the maintenance of some pressure on landlords and tenants respectively to do their duty under the Act.

"I do not propose to detain the Council by running over the sections which now form Part II of the Bill relating to the procedure which has been adopted, as will be seen from the marginal references given in the Bill, from the Indian Registration Act. I will therefore pass on to Part III, the Part which provides for the recovery of the expenses of survey and of the preparation of a record of rights. As I said just now, all reference to a Cess has been removed, and this Part of the Bill really assumes now the form of an amplification of section 114 of the Bengal Tenancy Act. We do not propose to strike out that section or to repeal it. What is proposed is that we should take power to adopt an alternative procedure—a procedure not alternative in its main

principles, but alternative so far in that it supplies details which have been found in the actual experience of the working of the section to be wanting. For instance, in section 28 we propose to take power to recover not only from proprietors, landlords and tenants the cost of survey and settlement, but also from rent-free owners and occupiers. It is obvious that they will also derive benefit from survey and settlement proceedings, and it is but fair that they should pay their quota of the expense.

"In section 29 also we have provided for a small point in which some difficulty has been experienced. It has sometimes been held that when a local area, say a district, has been notified for survey and settlement proceedings, the recovery of the charges of such proceedings can only be effected over the same area as was originally notified. We propose therefore to take power to recover the charges of survey and settlement over any part of that notified area in which the survey-settlement proceedings have arrived at a stage to admit of recovery being made. The intention is, of course, that such recovery shall not be made over a very small area such as a field or two, but over some large areas, such as a thana or sub-division, as may be found most convenient.

"The last section to which I shall have to allude now is section 32, in which we propose to take power to recover from the successors in interest of those who were living at the time the survey-settlement proceedings were being carried out. The question has been raised whether, if the persons who were alive at the time when the proceedings were being carried out are not alive or are not forthcoming when the charges for the survey-settlement proceedings have to be paid, their successors in interest should be liable for those charges. We propose now to provide that they should be, so that persons having interests in the land should know that if the charges for survey-settlement proceedings have not been paid by their predecessors, they will have to pay them.

"There is hardly any other change of importance to which I need allude, except perhaps the appellate provisions in section 34. We have provided for an appeal from every order of a Registrar of Mutations affecting any entry in the register of mutations, within one month from the date thereof, to the Collector of the district, and that the latter's decision on such appeal shall be final. We have thought over this provision very carefully in Select Committee, and we considered that, having regard to the smallness for the most part of the operations with which this Act will deal, it will be quite sufficient to provide for one appeal to the Collector of the district. I presume that it would

always be open to any person aggrieved by such decision on appeal to seek relief in the Civil Court. It is not necessary for us to say so.

"I do not propose to detain the Council any longer, but before sitting down I should like to thank my hon'ble colleagues in the Select Committee for all tne trouble they took and the great assistance they afforded in arriving at the conclusions embodied in the revised Bill. The Committee sat nine times, and I think I may say that every word, every syllable and every letter in the Bill was carefully considered.

"With these remarks I beg to move the motion that stands in my name."

The Hon'ble MAHARAJA SIR LUCHMESSUR SINGH BAHADUR OF DARBHANGA said:—"I take this opportunity to thank the Government and the Members of the Select Committee for the very conciliatory way in which they have treated the suggestions made by the various Associations representing the landholders of Bengal, and I only wish to say a few words against the principle of making the landlord and tenants liable for the payment of the cost of the survey. Not only the land lords, but many of the representative Associations of the raiyats as well, including the Indian Association, have submitted representations to the effect that Cadastral Surveys ought to be undertaken only in special cases of agrarian disputes, or in those cases where the zamindars or the raiyats specially ask for them. I do not wish to question in any way the right of the Government to have a Cadastral Survey even in those cases in which the raiyats or zamindars do not need it for their own purposes, but in all those cases I have always maintained that the expense of making such a survey ought to be borne entirely by the Government as was done in the Benares Division. When it comes to the question of the bill being paid, it is only just and equitable that the classes of persons, who have to pay that bill, should first be asked as to their willingness to pay it. No doubt the Government was actuated by the best of motives in ordering the Cadastral Survey of Bihar, but it is a question of difference of opinion; and in a matter of this sort I think the persons most interested, that is to say, the raiyats and zamindars, ought to be in a position to know their own interests far better than the Government. In a purely technical matter of this sort professional opinion ought to be considered to be of greater value than any theoretical knowledge of the land question or the opinions of the highest Governments Officials. It may be that in cases some benefits are likely to be derived from a Cadastral Survey. I would however, have

liked some provision inserted in the Bill to the effect that where the majority of the raiyats of a village object to the survey, and where they think that the expense and vexation that a survey is likely to entail far outweigh the benefits they are likely to obtain, the raiyats should be exempted from the payment of the expense. The landlord and the tenants ought at least to be allowed the chance of saying whether they consider the expenses that they will have to incur and the unrest, litigation and ill-feeling that is likely to be created, are at all adequate to the so called benefits. In a great many cases there exists even now certain record of rights. These records may not give as much information as the Government wishes: but they are quite sufficient to satisfy the requirements of the zamindar and the raiyat. And if in such cases the Government wishes to have a Cadastral Survey, the only inference that can be drawn is that they wish it for the sake of obtaining statistical informations only, consequently the Imperial Exchequer ought to bear the whole cost for obtaining these statistics. The non-introduction of any provision of this sort seems to me the best proof of the fact that there are many cases in which the raiyats themselves object to a survey.

"These are the only remarks I wish to make on the speech which has just been delivered by my hon'ble friend, the Mover of the Bill. The other minor points contained in my former speech have been met by the alterations which have been made in the Bill by the Select Committee, but the portion of the speech which refers to this point has not been touched. I therefore take this opportunity to enter my most strong protest against this policy of meddlesome Philanthropy which considers all technical opinion to be beneath contempt, though no doubt the Government has been actuated by good motives. I am not speaking here simply as the representative of the landlords alone, but I speak after having consulted such men as the Hon'ble Babu Surendranath Banerjee and others, who are supposed to be representatives of the raiyats as well."

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND also moved that the clauses of the Bill be considered in the form recommended by the Select Committee.

The Motion was put and agreed to.

The Hon'ble MAHARAJA SIR LUCHMESSUR SINGH BAHADUR OF DARBHANGA moved that, after section 1, the following section be inserted:—

'On the commencement of this Act in any district or part of a district so much of Regulation XII of 1817 as has not been repealed shall be repealed in such district or part of a district.'

[*Maharaja of Darbhanga; the President.*]

He said:—"My object in moving this amendment is that after the Cadastral Survey of a district or part of a district has been completed, the work of the patwari practically ceases as far as his submission to Government of any statistical papers are concerned, because, with such an elaborate system of registration of the record of rights, I think all the papers the Government are likely to need will be forthcoming from the office of the Rural Registrars. Over and above this, when the Cadastral Survey of Bihar was first undertaken, a very important section of the community which was represented by the Bihar Planters' Association agreed to the Cadastral Survey on the distinct understanding that the patwari was to be abolished and that they would get certain facilities for the recovery of rents. They did not accept the Cadastral Survey unconditionally. In other words they accepted it only as a part of a bargain. Now I simply ask the Government to fulfil its part of the bargain. Although we are very thankful to the Bengal Government for having done their very best to have the patwari abolished, still I humbly submit that unless the patwari is abolished, there will be a sort of feeling among certain classes of the community—it might be an ill-founded feeling—that the Government had broken its promise. I am not one of those who would for a moment believe this, but still I think that the feeling is likely to be created. And every possible precaution ought to be taken to prevent the creation of any feeling amongst any section of the community of breach of faith on the part of Government. The creation of such feeling is likely to cause disastrous results. The best thing therefore, that can be done under the circumstance is, if possible, to abolish the patwari altogether. Then as regards the information that zamindars are called upon to furnish to the Government in the shape of Road Cess Returns, we find very often that we have to work through these patwaris, and we have no other alternative but to make these patwaris do our work; and very often these patwaris for their own purposes, and knowing very well that zamindars have no power to dismiss, purposely delay in submitting these Road Cess Returns, and in such cases it is not the patwari who is punished but the zamindar who is fined for the delay; whereas really the delay is not caused by the zamindar but by the patwari. However, if the Government still thinks that the zamindar should be made liable for the submission of Road Cess Returns, it is only fair that they should give the zamindar the power to dismiss the patwari, through whom work has to be done, for his contumacy."

The Hon'ble THE PRESIDENT said:—"I am obliged to announce to the Council that I cannot allow this amendment to be put. The Council is bound by the Rules which are laid down by the Government of India with regard to the

scope or limitation of any Bill which is brought before it or is discussed in it. A clause to abolish this Patwari Regulation was embodied in the Draft Bill which was sent up by the Government of Bengal to the Government of India, but it was struck out by the orders of His Excellency the Viceroy and Governor General of India in Council. It is impossible therefore for the Government to re-introduce a section which has been struck out by the Government of India, and what the Government cannot do a private Member of this Council cannot do. Recognising the great authority of the Hon'ble the Maharaja of Darbhanga, both on account of his personal character and the interests which he represents, I thought it right not to interfere until he had finished his speech, but I am obliged to say that I cannot permit any further discussion of the question, and I cannot allow the amendment to be put.

"The same remarks apply to the amendment No. 19 in the List of Business which stands in the name of the Hon'ble Mr. Ghose with the object of providing a summary procedure for the recovery of arrears of rent. It is well known to Hon'ble Members and to the Council how entirely I sympathize with the proposal that he has made. But it would be an alteration in the substantive provisions of the Bill which we have received the sanction of the Government of India to introduce, and it is beyond the power of this Government to introduce a substantive change of this kind while the Bill is under discussion. I shall solicit the assistance of my hon'ble friend in preparing a draft of future legislation to carry out the object which both he and I have in view, but I am obliged to say that I cannot allow these amendments to be put to the Council on the present occasion."

The Hon'ble Mr. Ghose moved that section 5 of the Bill be omitted. He said:—

"I do not think it is either necessary or desirable for the purposes of this Bill to retain section 5. It has been pointed out by every public body which has been consulted in reference to this Bill, including the British Indian Association, the Property Defence Association, and last, but not least, the Bengal Chamber of Commerce, that under the Road Cess Act landlords are required to furnish periodical returns showing the names of holders of estates and tenures, and also of raiyats and giving various other particulars. It is difficult to see what useful object is to be obtained by insisting upon the submission of certain additional returns under this Bill. I am bound to say that the other day, when I had the advantage of a conversation on this subject with the learned Officiating Advocate-General, he was good enough to point out that there is one particular item of information which was not contained

in the Returns under the Road Cess Act, and that is the number and description of the particular plots and fields which may be in the possession of various tenants. I submit that even if this additional information is obtained, in my humble opinion it will be of very little use to the Government, and I say with reference to the observations of the Hon'ble Member in charge of the Bill with regard to the presumption of relevancy, that in most parts of Bengal transfers of tenant rights *inter vivos* have no legal validity whatever without the assent of the landlord; and therefore when you have this additional information you will find that, except in the very few cases in which the landlord has acknowledged the transfer for a consideration, and may have made the necessary mutation of names in his own books, his returns will not show these transfers at all. In the majority of cases the names of the old tenants will continue to be retained in spite of any transfer which may have taken place; therefore you will have these zamindari returns mostly in conflict with the official register of mutations, and it is difficult to see how such returns will be of any use. But in spite of this, if the Government still think this information will be of any use, I submit that the better course will be, instead of insisting upon two sets of returns under two different enactments, to facilitate matters the additional information required may be included within the returns furnished under the Road Cess Act, and for that purpose the form given in the first schedule of that Act may be amended. By adopting this course landlords will be saved a great deal of trouble and worry and expense, and instead of their submitting two different sets of returns, one return will suffice. With that view and to spare all unnecessary hardship, I move that section 5 of the Bill be omitted."

The Hon'ble MR. BUCKLAND said:—"The Government are not prepared to accept the Hon'ble Member's amendment. The point of the Hon'ble Member's remarks, if I rightly apprehend them, is that all that is necessary will be supplied by an amendment of the Road Cess Act. I do not know whether the Hon'ble Member is aware that under the Road Cess Act returns are not made annually, as we may desire to have them made under the Maintenance of Records Bill. Ordinarily, valuations and re-valuations of districts do not take place until after periods of five years, and it may be longer, and it is considered much better that this Act should be self-contained rather than that another Act should be amended so as to work into the purposes of this Act. There is nothing at all novel in the principle of this section. Ever since the passing of the Patwari Regulations of 1817, it has been within the power of the Government to get very similar information from zamindars. A provision very much to the same effect as section 5 of this Bill found a place in the draft Bill appended to Sir Antony MacDonnell's Minute of the 20th of September 1893, and a provision similar

to this was recommended by the Calcutta Conference of experts in settlement matters, which assembled in the cold weather of 1893-94. I may also point out, as perhaps the Council are not aware of the fact, that in other Provinces power has been taken by the Government to procure similar information from the owners and occupiers of lands. I hold in my hand a selection from the Revenue Laws of the North-Western Provinces, the Central Provinces, Oudh and the Punjab; and I find that by section 9 of Act XIII of 1882, the North-Western Provinces and Oudh Kanungos and Patwaris Act, provision has been made for such information to be furnished by the owners and occupiers of land. I will read an extract of this section to the Council:—

'For the purpose of preparing the registers or accounts prescribed by the said Oudh Land Revenue Act, 1876, or by any rule made thereunder, every owner or occupier of land in any Patwari's Circle, and the agent of every such owner or occupier, shall furnish to the patwari of such circle, the kanungo or such person as the Deputy Commissioner may appoint in this behalf, such information, at such times, as the Chief Commissioner may from time to time by rule prescribe.'

"Again, similar provision is to be found in section 128 of the Central Provinces Land Revenue Act, XIII of 1881, and also in section 40 of the Punjab Land Revenue Act, XVII of 1887. What we want to obtain (and I think it will be very beneficial to landlords to have on record their view of the state of affairs in their estates as it appears in their own papers), is to have mutations of the record of rights, as they are known to and acknowledged by proprietors, brought into comparison with the transfers brought to our notice by tenants. I know it has been said, and it was said in Select Committee, that it will be impossible for the statements furnished by proprietors to afford any check on the lists of transfers of which notice has been given by tenants. It may be so or it may not be so; but we think we should get from both sides all the transfers that are effected and acknowledged: and that is the ideal at which the Bill aims. At any rate it is out of the question to amend the Road Cess Act for this purpose and to postpone the filing of these statements for five years or more when we shall want them to be furnished annually. It is therefore my duty to oppose this amendment."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"In the observations which have been made by the Hon'ble Mover of the amendment in support of this amendment, I agree to a very considerable extent. The Council will remember that the question raised by this amendment is one of

the questions which were largely discussed at the time when the Bill was referred to the Select Committee. On that occasion I ventured to make a full statement of my objections to this section, or rather to the corresponding section in the original. I still entertain the opinion that the section under discussion is out of place in a Bill, the ostensible object of which is to maintain the record prepared under the operation of Chapter X of the Bengal Tenancy Act. That record deals with the details and particulars relating to the tenant's rights. This section is therefore foreign to the principal subject of the Bill. But quite apart from that view, the section is open to objections of a more serious nature. This section is calculated to force the hand of the zamindar in a most unsatisfactory manner. There is some little difficulty in ascertaining the precise law relating to the transfer of a right of occupancy, but I think I stand upon safe ground when I say that, unless there is a custom to the contrary, the transfer of a right of occupancy by the tenant is not valid unless such transfer is effected with the consent of the landlord. Now, if a landlord has to make a return, and you ask him to state who are the present tenants, and whether occupancy rights have been transferred or not, what is the landlord to say? Is he to state in his return, for instance, with reference to a particular tenure which has changed hands, that the old tenant is still his tenant, or is he to state the name of the transferee, or is he to state nothing and keep quiet under that head. If he is to state the name of the old tenant, he makes a false return; if he notices the fact of transfer and states the name of the transferee, then he will be looked upon as having consented to the transfer; if he is to notice the transfer with a note of his objection to the transfer, he will still be held to have treated the transferee as at least in present possession under the transfer, and he will prejudice himself in regard to his rights in various ways; if he says nothing under that head in his return, he will not have complied with the requisition. This objection is sufficiently serious to render it inexpedient that a section like the present should be introduced in a Bill which does not profess to deal directly with the relative rights of the landlord and tenant, but which deals with the register as framed under section 114 of the Bengal Tenancy Act. Of course this objection will not arise if you ask the zamindar to make a return relating to tenant's right in accordance with his own register; but that is probably not what is intended by the Government.

"Again, it is quite clear that other existing enactments contain sufficient provision to enable the Government to obtain every information from the zamin-

dar, and under the machinery of those enactments all necessary information is available, and no possible good is likely to result in multiplying modes of getting information.

"But there is still another objection of a still more serious character. There will be enormous practical difficulty in carrying out this section. The section provides that the zamindar is bound to make a return on the issue of a notification in the Calcutta Gazette. The issue of a notification in the Calcutta Gazette constitutes all the notice he has of the intentions of the Government that he is called upon to make a return; and if he omits to make a return, certain penal consequences arise. Now, I ask, how many of the ordinary landlords in the Mufassal subscribe to or read the Calcutta Gazette: their number is exceedingly small, and the large majority of them are even unaware of the existence of the Calcutta Gazette. The notice therefore is wholly insufficient. In other existing enactments in the matter of returns, greater facilities are afforded to the zamindars for informing themselves in regard to the intentions of the Government. In the Road Cess Act, section 14, a proclamation is contemplated, and when a revaluation takes place, the matter is not left to the mere issue of a notification in the Calcutta Gazette, but the information is brought nearer home to the zamindars by the issue of a proclamation which is the next best mode of conveying information, the best mode being a special notice issued to every individual zamindar. I submit that this section should be omitted altogether from this Bill, or if it is retained, then some better mode of giving notice should be prescribed, or at all events the question of notice should be considered in connection with the provision relating to a penalty for omission to make a return. I may state that I had an amendment upon this section and also several other sections of this Bill, but I am precluded from bringing forward my amendments in consequence of some little delay in giving notice of those amendments."

The Hon'ble MR. BEIGHTON said:—"With regard to the present amendment and the numerous others which will be placed before us, I desire to remind Hon'ble Members of this Council of the valuable remarks which fell from the President on the last occasion on which His Honour presided, with regard to the mode in which the Council should deal with the labours of Select Committees, the measure of confidence which the Council should extend to the

results of their deliberations, and the reliance that should be placed in the conscientious and painstaking efforts that have brought about these results.

"Perhaps, as a Member of the Select Committee, I ought to have left it to some other Member of Council to make these observations, but I have no wish to eulogise the outcome of our labours beyond repeating what has fallen from the Hon'ble Member in charge of the Bill that there is no portion of the Bill which has not received most anxious attention, and no suggestion in the voluminous papers referred to us which has not received full consideration. I desire therefore to associate myself with the remarks made by Your Honour on the occasion to which I referred, and further to emphasize very strongly that there could be no Bill to which they are more strictly applicable than the present one. There is no great question of principle involved in this Bill. We have merely endeavoured by a series of details closely interwoven with each other to provide a system which will work automatically for securing a record of transfers of tenant right. The Bill is like a complicated piece of machinery of which the working is stopped if a single pivot be moved. If we deprive ourselves of the additional means of testing the accuracy of the tenants' notices of transfer which is provided by the statements to be submitted by landlords under section 5, we seriously jeopardise the success of the measure. It is essential that we should obtain data from both sources of information. Criticisms have been made by both the Hon'ble Members who have spoken as to the effect of those statements in embarrassing landlords who wish to protect themselves against the creation of unauthorized rights of occupancy by their tenants. I wish to state most emphatically that the rights of landlords will not in the least degree be affected either by section 5 or any other section of the Bill. Section 5 in no way requires landlords to include in their statements anything except a 'change' in their tenants' rights, and if they do not recognise the validity of a transfer they need not report it. At the same time, if I heard correctly what was said by the Hon'ble Mover of the amendment, he appears to think that no transfers are valid anywhere unless made with the consent of the landlord. This is hardly correct; for in some parts of the country transfers are valid as being authorised by the custom of that portion of the province of which the district of Rangpur is an example. The landlord has, however, as I said above, every right to resist encroachments of this kind, and the Bill leaves his rights unimpaired.

[*Mr. Beighton ; Sir Griffith Evans.*]

"With regard to the mode of publication otherwise than in the Gazette, a suggestion which fell from the Hon'ble Maulvi Muhammad Yusuf, I must confess that, speaking for myself, I regret that the proposal did not reach us sooner, but upon the whole I think we ought to retain section 5 as it stands in the Bill."

The Hon'ble SIR GRIFFITH EVANS said:—"I have one or two observations to offer on the question now under consideration. I do not take the same view of it which the Hon'ble Maulvi Muhammad Yusuf has done. I put it to the Council that it will really be to the benefit of the landlord that this reference should be made to him. The return he makes will be a public record, and will be considered to be a statement made under compulsion of law, and will be admissible as evidence of relevant facts. It may be that there will be a large number of transfers of occupancy rights recorded, although the zamindar may truthfully say that no changes have taken place in his tenants' rights, because in parts of the country where transfers are not possible without the assent of the zamindar, he would have a right to say that no changes have taken place in his raiyats' rights, notwithstanding that there may have been all sorts of invalid documents made. Therefore, the result would be, as far as the landlord is concerned, that there may be from time to time a large number of transfers registered, which are invalid as not being allowed by custom. Transfers without the consent of the landlord are invalid unless validated by the custom of the place; therefore, in such cases there would, under this section, be the protest of the landlord as evidenced by such transfers not being entered in the statements filed by him under this section. We know that as a rule landlords consent to transfers being made where the transferees are proper persons, and if they are willing to take upon themselves the payment of all arrears due by the transferor, and the landlord does not as a rule take any fee except a sort of registration fee. Wherever this state of things prevail, that is to say, wherever a right of occupancy is not transferable without the consent of the landlord, there the landlord has every right to see that transfers are only made to really *bonâ fide* raiyats. If I were a landlord myself I should take all the care I could to see that a *mahajan* did not come in, and I should, in any case, take care that a tenant who is likely to harass me in many ways should not come in. Moreover, it is very desirable for the Government to know what is the real position and how the Act works, but if transfers are registered by only one of the interested

parties, there will be nothing to contradict the register of mutations. The provisions of section 5 of the Bill will enable the landlord to contradict every one of these attempted transfers which he is unwilling to recognise: he need not take any notice, but in effect he will simply say—I do not acknowledge these transfers. Therefore, to my way of thinking, the furnishing of these statements by landlords will be better for the interests of the landlords, and it will undoubtedly better enable the Government to see how the Act works."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, said:—"I have one observation to make. I think the apprehensions entertained by the learned Mover of the amendment may be removed if he will only refer to the provisions of sections 8 and 9 of the original Bill. Section 9 of that Bill provided for service of notice of transfer on the landlord, and section 8 required that the Sub-Registrar should notify to the landlord the fact of such transfer having been recorded, and it was further provided that the entry should be presumed to have been correctly made until the contrary is proved. This matter was well considered in Select Committee, and, after much deliberation and consideration, those two sections were omitted, the result being that there was now no longer any provision for notice being served on the zamindar, and no entry in the register of mutations would be evidence against the zamindar that such transfer had been made; and in place of sections 8 and 9, section 5 has been introduced, which is merely an enabling section to help the Government in checking entries in the registers, but it would not be binding upon the zamindar to acknowledge any transfer. Therefore the apprehensions which are entertained by the Hon'ble Member are misplaced and have no foundation."

The Hon'ble MR. GHOSE in reply said:—"I only desire to correct a misapprehension into which the Hon'ble the Legal Remembrancer fell as regards my observation as to the invalidity of transfers of tenants' rights. There are of course parts of Bengal in which by custom such transfers are made. Having made that correction and having regard to the opinions which have been expressed by several Hon'ble Members, I would ask the permission of the President to withdraw this amendment."

The Motion was, by leave, withdrawn.

The Hon'ble MAHARAJA SIR LUCHMESSUR SINGH BAHADUR OF DARBHANGA, by leave of the Council, withdrew the motion of which he had given notice that section 5 of the Bill be omitted.

The Hon'ble Mr. GHOSE moved that in line 4 of section 6, after the words "or any part thereof" the words "bearing a separate number in the Record of Rights" be inserted. He said:—

"This is a small matter, but nevertheless it is a matter of some importance. This Bill is intended more or less for the benefit of raiyats, but I venture to think that if you insist on every fractional transfer which may take place being registered, you will, instead of benefiting the class you want to benefit, throw a burden upon the people which they are ill capable of bearing. It is quite right and proper that where a raiyat holds two or three plots of land bearing different numbers in the record of rights, if he parts with plot 1 or with plot 2 or with plot 3, it is quite right and proper that he should give notice of such transfer, and that the change should be noted in the register of mutations. But I can well conceive a case of a poor tenant parting with one bigha or with half a bigha of land out of a particular parcel, and it will be hard if in cases of such small fractional transfers he is obliged to go through all these formalities. Besides, what would be the result? I do not know if, when another tenant comes into a portion of a plot, his name is to find a place in the register or how it is to work. This is the commencement of a new reform connected with land registration, and I think we ought to be satisfied with having entire plots registered. That, I think, is as far as it is desirable to go."

The Hon'ble MR. BUCKLAND said:—"The result of this amendment, if it is accepted by the Council, will be that it will be necessary to give notice only of transfers of land which bear separate numbers in the record of rights. I think that perhaps the Hon'ble Member does not quite know what a survey number is. I am not sure that anything which fell from him would lead me to suppose that he is aware of the technical definition of a survey number. I ought therefore to enlighten the Council as to what is the meaning of this term. It corresponds with a field number and is thus defined in page 7 of the Director of Bengal Survey's Report for 1893-94:—

'A field or survey number is an area of which the ownership is separate and the occupant is separate. Each parcel of land lying in one spot, in the occupation of one person or of

several persons holding jointly, so held under one title, provided it is all of one soil and is all rented at a uniform rate, shall have a separate number.'

"I may also inform the Hon'ble Member that, by the adoption of this definition, in practical working, fresh survey numbers are given to every small parcel of land which corresponds to the definition of a holding. I will not go through all the instructions upon the point, but I will refer to the survey hand-book by Colonel Barron, which I hold in my hand, containing instructions for cadastral survey parties. One of the rules provides that the several portions of one enclosure should be mapped and numbered separately, when there has been a legal partition and the partition papers show the location and direction of the shares: this is also required when a portion of an enclosure is held by a sub-tenant: also, when a garden is held rent-free by a tenant: also, when part of a field is fallow or grass, and part is cultivated: also, when on the side of a field, there is a piece of waste sufficiently large to be shown separately from it. I need not state them all; there are ten illustration cases given in which separate survey numbers are now attached to parcels of land which may be very small. As I mentioned at the meeting of the Council on the 9th March last, there are on an average $2\frac{1}{2}$ of these plots, that is, separate survey numbers to an acre of land, which is equivalent to an average of 1,936 square yards for each survey number, or about 45 yards each way. It is very easy for the Council to imagine what very small plots of land are, under the existing rules and instructions of the Survey Department, treated as separate survey numbers; and it is therefore not very much to ask that whenever any raiyat thinks it necessary to sub-divide his, possibly very small, plot of land, the sub-division should be placed on record. These transactions will be of as much concern to these raiyats as very much larger plots of lands to other persons. The object of the Bill is not only to keep a record of large transfers, but to have also a record of all these smaller transfers which are of as much importance to the raiyats as larger transfers are to the zamindars. I therefore think it right to oppose this motion on behalf of the Government. I will also ask the Council to look at the question in another way. An average plot of land may be 50 yards by 40 yards, but there are also some very large plots of acres and acres in extent: is it to be held that, when one of these technically so-called survey numbers or plots is of large size, sub-divisions of it ought to be registered, but that in the case of the splitting up of small plots no record of the fractional

[*Mr. Buckland; Maulvi Muhammad Yusuf; Mr. Beighton; Maulvi Serajul Islam.*]

transfers is necessary? Where is the line to be drawn? What we want is that all these transfers should be registered, and not only transfers of whole survey numbers. I must therefore oppose the amendment."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"I do not know what good this amendment will be productive of to the raiyats If it is expedient to provide for the registration of transfers in connection with entire plots of land which bear entire survey numbers, surely reasons do also exist for the registration of portions of such plots."

The Hon'ble MR. BEIGHTON said:—"I have only one word to say supplementary to the remarks which fell from the Hon'ble Member in charge of the Bill. Section 7, clause (*d*), provides that 'the notice shall contain such further particulars as the Local Government may from time to time prescribe.' It will be quite possible for the Local Government to prescribe for the notice giving such a description as will secure the identification of particular portions of a plot which have been transferred. For instance, when a portion of a particular survey number has been transferred, 'such further particulars' may include the area of the portion of the plot so transferred, and also the situation of the portion transferred with reference to the points of the compass. So I think the confusion which the Hon'ble Member anticipates is not likely to arise. Moreover, unless the register of transfers is to include portions of plots, it will not be exhaustive, and the Record of Rights will be imperfect and therefore valueless."

The Hon'ble MAULVI SERAJUL ISLAM, KHAN BAHADUR, said:—"Although I was a Member of the Select Committee I am inclined to support this amendment, and I do so on this ground. I do not think it will be convenient or expedient to register these petty transfers of portions of a plot of land. The holding of a raiyat may consist of several survey numbers, and if he transfers a portion of any lands which are included in any one of these survey numbers, it will be very inconvenient and very difficult not only to register the transfer, but at the same time it will be hard on the raiyat to go to the expense of registering it. It was said by the Hon'ble the Legal Remembrancer that under section 7 (*d*) a specification of the interest transferred must be given. By the term 'nature of the interest' in clause (*b*) I understand is meant whether it is a right of occupancy or a tenancy with occupancy rights at a fixed rent, but it does not

mean the boundaries of the portion of the holding which has been sold. Therefore I submit that having regard to the great inconvenience and expense to which this provision would put the poor raiyats, the Government ought not to insist upon so much detail. It is, of course, very desirable to have the record complete and perfect, but it is not possible to make everything perfect. I think it will serve the purposes of the Government and of the public if only transfers of entire holdings be entered in the register, and I submit it will not be convenient to go beyond that."

The Hon'ble MR. R. C. DUTT said:—"As a Member of the Select Committee to which the Bill was referred, I desire to say a very few words to explain the reasons which influenced me in keeping the section as it stands. The question which has been raised now was raised in Select Committee, and was very thoroughly discussed, and we came to the conclusion that it would be impossible to keep the Record of Rights complete unless we provided that transfers not only of tenures and holdings, but also of parts thereof, should be duly recorded. The object is to keep the Record of Rights complete and correct up to date, but if we accept this amendment, I do not see how that object can be attained. The Hon'ble Member in charge of the Bill has said that what is one plot now may, after transfer of a portion of it, become two plots, and therefore, unless we provide for the registration of such transfer, the record will not be correct up to date, and the object we have in view will be lost."

The Hon'ble MR. LYALL said:—"I had not intended to speak upon this amendment, but there is one point that I think it necessary to bring to the notice of the Council. I have very serious doubts whether the amendment, as it is worded, will carry out the intention of the Hon'ble Mover. If the Hon'ble Members will look back to section 2, they will see that by the term 'Record of Rights' shall be understood the Settlement Record of Tenant-rights, called the *khatian*, or such new edition of such record as may be prepared under rules made under this Act. It is clear that the Hon'ble Mover does not mean a separate Record of Rights (*khatian*), but that he means a separate survey number. [The Hon'ble Mr. Ghose said:—"I meant 'survey number.'"] On the point at issue I am at one with the Hon'ble Members who expressed the views of the Select Committee."

The Motion was, by leave, withdrawn.

[*Babu Surendranath Banerjee.*]

The Hon'ble BABU SURENDRANATH BANERJEE moved that in line 8 of section 6 the words "or of intestate or testamentary succession" be omitted. He said:—

"In moving this amendment, and having regard to some observations which fell from the Hon'ble the Legal Remembrancer, I wish to say that I do not in the remotest degree wish to imply any reflection upon the labours of the Select Committee. I am grateful to the Select Committee for the way in which they have dealt with this Bill, and I am also grateful to the Government not indeed for having introduced the Bill, but for its conciliatory attitude in regard to this matter which made it possible for the Select Committee to revise the Bill in the way which they had done. But there are some matters of detail in which the Bill is susceptible of improvement. Under section 6 the transferor or the transferee is bound to give notice of the fact of the transfer to the Registrar of Mutations within four months of the date of such transfer. As far as the transferee by succession is concerned under section 15 of the Bengal Tenancy Act, he is required, in the case of a mukarrari tenure, to give notice of the transfer to the Collector. Thus a double duty is imposed upon him by this Bill. *First*, he has to give notice to the Collector, and *secondly*, he has to give notice to the Registrar of Mutations. It is a very serious matter to ask a raiyat to give up his work to dance attendance in our Courts of Law and to come in contact with all their demoralizing influences. Section 15 of the Bengal Tenancy Act provides that when a succession to a permanent tenure takes place, the person succeeding should give notice of such succession to the Collector. The section says:—

'When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the Collector in the prescribed form and shall pay to the Collector the prescribed fee for the service of the notice on the landlord, and the landlord's fee prescribed by section 12, and the Collector shall cause the landlord's fee to be paid to, and the notice to be served on, the landlord in the prescribed manner.'

"Therefore, so far as permanent tenures are concerned, provision is made for notice of transfer, and the object of my amendment is to obviate the necessity of giving a second notice in respect of the same transaction. Nothing could be easier than for the Collector to send a copy of the notice to the Registrar of Mutations."

[*Mr. Buckland; Mr. Dutt; Mr. Beighton.*]

The Hon'ble MR. BUCKLAND said:—"The Hon'ble Member has referred the Council to section 15 of the Tenancy Act, and has stated that that section provides for notice being given to the Collector of successions to permanent tenures. I have always understood the meaning of that section and its object to be to ensure, not only that notice should be given to the Collector, but that a fee should be paid to the landlord. That, I believe, was the main object of that particular section. It is not so necessary that the Collector should know about the succession. The object was that the fee should be taken and paid over to the landlord. But this does not touch the point at which we aim by section 6 of the Bill, which requires that notice of transfer of all tenures (not only permanent tenures) should be given. Therefore I do not see that any case has been made out for the amendment. The Hon'ble Member wants us not to do what is proposed, on the ground that it is provided for in section 15 of the Tenancy Act; but we say that that section has a very different object, and does not cover the whole field which we are trying to cover by our section. I shall therefore oppose this amendment and any amendment which aims at limiting the number of transfers we can possibly get into our net."

The Hon'ble MR. R. C. DUTT said:—"I have one word to say on this point. I desire to oppose this amendment for the same reason which I mentioned just now. The Hon'ble Member in charge of the Bill has pointed out that the section of the Tenancy Act which the Hon'ble Mover of the amendment quoted, does not cover the whole field intended to be covered by section 6 of this Bill. The object of the Bill is to have a complete record of transfers of all holdings. The section quoted relates to the transfer of permanent tenures only. I believe that, as a fact, there are 50 or 100 transfers of ordinary holdings to one transfer of a permanent tenure; therefore section 15 of the Tenancy Act does not cover the object we have in view. We have therefore provided for the registration of all successions; otherwise the record would not be complete and correct up to date."

The Hon'ble MR. BEIGHTON said:—"I am bound to say that both the Hon'ble Member in charge of the Bill and I feel that there is some force in what has been urged by the Hon'ble Mover of the amendment, and, with the permission of His Honour the President, I will move an amendment which, as far as sections 12 and 15 of the Tenancy Act are concerned, will meet

the object of his amendment. In section 20 of this Bill we have provided that the fees payable to the Collector under sections 15 and 18 of the Bengal Tenancy Act may be paid to the Registrar of Mutations when notice is given under section 6, and such payment shall be held to be payment to the Collector. I must confess that we omitted to notice that although we are legislating in a way that will prevent the payment of double fees, the wording of the section still leaves it obligatory on the tenant to give notice to two separate officials, and I think therefore we ought to add to section 20 the words 'and such notice to the Sub-Registrar shall be held to be a notice to the Collector under sections 15 and 18 of the Bengal Tenancy Act.' If the Hon'ble Mover of the amendment will accept my proposal and withdraw his amendment, I will undertake, with the permission of His Honour, to move to add these words at the end of section 20, which will, I think, meet the Hon'ble Members' views."

The Hon'ble BABU SURENDRANATH BANERJEE having accepted this suggestion and withdrawn his amendment—

The Hon'ble MR. GHOSE moved that in line 9 of section 6 the word "six" be substituted for the word "four" between the word "within" and the word "months." He said:—

"The idea is this, that as regards the mutation of names in proprietory rights, the time allowed is six months, and as regards this new measure calling upon the raiyats to register transfers of their rights, I think the same term ought to be given to them as is now allowed to landlords under the Act of 1876. Although this is not a matter of any great importance, it is a matter which has been noticed by every one of the Associations. The Bengal Chamber of Commerce say:—

'The Committee do not understand why in section 4 (which is now section 6) the reference is to section 23 of the Registration Act limiting the time for report to Sub-Registrars of the acquisition of proprietory right to four months, when such a report is equivalent to an application for mutation of names under section 42 of Act VII of 1876. They would represent that the time should not be reduced to four months, but that the precedent of the Act of 1876 is the more correct and more just to follow.'

"I submit that though transfers of proprietory rights are removed from this Bill, still it holds good as to tenant rights. Raiyats are engaged in the cultivation of their fields, and it must be sometimes hard upon them to do a

[*Mr. Ghose ; Mr. Buckland ; Maulvi Muhammad Yusuf.*]

thing which is altogether novel to them, and it will take them sometime before they got accustomed to it. I therefore think it will be more reasonable to allow the same period, namely six months, as is allowed to landlords for similar registration on their part."

The Hon'ble MR. BUCKLAND said:—"This amendment aims at making this section conform to the period of time prescribed in the Land Registration Act, whereas we have in drafting the section deliberately followed the procedure of the Indian Registration Act of 1887, which has been followed almost entirely throughout this Bill, whereas it has little or nothing to do with the Land Registration Act in the matter of procedure. Therefore, in the matter of giving notices of transfers we have been guided by the time allowed by the Indian Registration Act for the presentation of documents for registration. In Part IV of that Act, sections 23 and 25, the period allowed for the presentation of documents is four months from the date of the execution of the document or of its arrival in India, and if that period is thought sufficient for the large number of documents registered every year under that Act, it is surely enough for tenants to give notice at very short distances of transfers effected by them. We have thought this over very carefully, and have come to the conclusion that there is no reason for altering the term. I must therefore oppose the amendment."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"I submit that the analogy from the Registration Act does not hold good. The Registration Act aims at one thing, this Bill aims at another. Under the Registration Act four months run from the time of the execution of an instrument, whereas in this Bill time is to run from the date of possession; and under the last proviso of this section, if an instrument has been registered, there need be no notice given at all by the tenant, because that proviso releases parties from the obligation to give notice if an instrument has been registered. No notice is necessary under section 6 of this Bill if the instrument is registered: that section will only come into operation if an instrument has not been presented for registration. The question being thus set free from any analogy to the Registration Act, the analogy of the Land Registration Act should govern, and six months should be allowed from the date of possession for giving notice to the Registrar of Mutations."

[*The President; Mr. Ghose; Mr. Buckland.*]

The Hon'ble THE PRESIDENT said:—"I wish to point to a mistake in the remarks which have been made in introducing this amendment. The Bengal Chamber of Commerce were quoted as objecting to the old section 4 of the Bill, but that section has gone out altogether and was not identical, as the Hon'ble Member thought, with new section 6. It was the section in which we proposed to deal with the transfer of proprietary rights. We do not propose to alter the law with regard to such transfers; we propose to make a new law with regard to transfers by tenants, and we give them four months to give notice of such transfers, and the reason for doing so is that four months is the time under the Indian Registration Act. All transfers under sections 15 and 18 must be carried out by deed, and must be presented for registration, and the raiyats know perfectly well that four months is the time for such registration. Surely it will be inconvenient if in a certain class of transfers the deeds have to be presented for registration within four months, and in another class of transfers of a very similar character notice can be given within the extended time of six months. It will be much more convenient if they have one period of four months for both classes of transfers."

The Hon'ble MR. GHOSE said:—"After the explanation which has been given by the Hon'ble the President, I beg leave to withdraw the amendment."

The Motion was, by leave withdrawn.

The Hon'ble MR. BUCKLAND said:—"I ask permission to move two verbal amendments, the necessity for which has been brought to my notice by the Hon'ble the Advocate-General and the Hon'ble Maulvi Muhammad Yusuf. They relate to certain matters of drafting which the Legal Members of the Council think necessary. In the revised Bill, in line 10 of sub-section (*1*) of section 8, after the word 'transfer,' where it first occurs in that line, I beg to move that the words 'or in the case of the death of both parties if their respective representatives admit the transfer' be inserted. The case of the death of either party is provided for in this section; the words I propose to insert will provide for the case of the death of both the parties. Then, again, after the word 'both' in the same line, I have to move that the words 'transferor or transferee or their respective representatives' be inserted. These are merely verbal amendments to carry out what has always been the intention of the section. Similarly, in line 3 of sub-section (*2*) of the

[*Mr. Buckland; Maulvi Muhammad Yusuf; the President; Babu Surendranath Banerjee.*]

same section, I move that the words 'or their respective representatives' be inserted after the word 'transferee.' These three little amendments all stand on the same footing, and are considered desirable to complete the sense and intention of the section."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"I am extremely thankful to the Government and to the Hon'ble Member in charge of the Bill for having accepted the suggestion I have made. I was late in giving notice of my amendments, and I therefore placed the list of my amendments by way of suggestions before the Hon'ble Member, and I am gratified to find that a large number of my suggestions has met with the approval of the Government."

The Motions were severally put and agreed to.

The Hon'ble MR. BUCKLAND said:—"I have another motion of a similar character to make. I move that in line 13 of section 9, after the words 'one month' the words 'from the date of the last-mentioned notice' be inserted. It is desirable to add these words to show from what date the period of one month should run. And in line 13 of section 15, I move to insert the same words 'from the date of the last-mentioned notice' after the words 'one month.'"

The Hon'ble THE PRESIDENT said:—"I will only add that we are indebted for these amendments to the careful examination of the Bill made by the Hon'ble Maulvi Muhammad Yusuf, whose suggestions have been approved by our Legal Advisors."

The Motions were severally put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in the proviso to section 11 for the words "exempt by law" the words "exempt by notification issued by the Government and persons exempt by the custom of the country" be substituted. He said:—

"This is a very small amendment. It is in the nature of a verbal amendment, and does not involve any question of principle. Persons are exempted from attendance at Courts either by a notification specially issued by the Government in that behalf, or according to the custom of the country. Rajas and

[*Babu Surendranath Banerjee; Mr. Buckland; Sir Griffith Evans.*]

Maharajas and the like are exempted by notification issued by Government; zanana ladies are exempt by the custom of the country. The amendment seeks to state in clear and distinct terms the grounds of exemption."

The Hon'ble MR. BUCKLAND said:—"If the Hon'ble Member will look at the margin of section 11, he will find there a reference to section 33 of the Indian Registration Act, and if he will compare section 11 of our Bill with that section, he will find that we have adopted the exact wording of the Registration Act. We have adopted to a very considerable extent the procedure of the Registration Act, and we saw no reason to depart from it in this particular. I am not aware of any objection being taken to the working of that particular section of the Registration Act, and I see no reason to alter the wording. I must therefore oppose the amendment."

The Hon'ble SIR GRIFFITH EVANS said:—"The wording of this section as it has been adopted from the Indian Registration Act, is absolutely correct. The exemption from attendance at Courts is given not by the custom of the country, but by the Civil Procedure Code, sections 640 and 641. So the exemption is given by law. And in the case of individuals it is the same; special exemptions are made by Local Governments under sanction of the law. There is therefore no necessity for this amendment."

The Motion was, by leave, withdrawn.

The Hon'ble MR. BUCKLAND said:—"I have another amendment to propose of exactly the same nature as those which have already been made. I move that in line 4 of section 14, after the word 'transferee' the words 'or in the case of the death of either if his representative' be inserted."

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND said:—"I will now ask the Council to add a few words in section 15, which my hon'ble friend the Advocate-General has brought to my notice as being desirable. I move that in line 19 of section 15, after the word 'shall' the words 'if the other provisions of the Act are complied with' be inserted. The object of this amendment is to make it clear that section 15 is not meant to override in any way the rest of the Act. It had escaped my notice that these words were necessary, but on the

advice of the learned Advocate-General the Government is quite prepared to accept the amendment, and I trust it will also meet with the approval of the Council."

The Motion was put and agreed to.

The Hon'ble MR. BEIGHTON said:—"I have already explained to the Council the reasons for which I wish to move an addition to section 20 of the Bill in lieu of the amendment proposed by the Hon'ble Babu Surendranath Banerjee in section 6, and which he withdrew on my suggesting the amendment which I now move. It was a matter which escaped the notice of the Select Committee, but the omission was discovered almost simultaneously by the Hon'ble the President and myself. I therefore now formally move that at the end of section 20 the following words be added:—

'and such notice to the Registrar of Mutations shall be held to be a notice to the Collector under sections 15 and 18 of the Bengal Tenancy Act, 1885.'

"I must ask the Council to notice that these sections deal only with permanent tenures and to tenures held at fixed rates, and do not cover the whole ground of section 6 of the Bill."

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND said:—"I will now ask the Council to look carefully to the proviso to section 24 of the Bill which runs thus:—

'Provided that no person shall be fined under this section who at any time prior to the institution of proceedings thereunder has given notice under section 6.'

"I alluded to this proviso this morning as being intended to give a tenant who had omitted to give notice a means of escaping the penalty; he can come forward before the institution of proceedings and confess that he has not given notice. It has been brought to our notice that a proviso to a similar effect should be added to section 25, which is the section that penalises a landlord who, under section 5, is required to file a statement and does not do so. It has been brought to our notice that we ought to allow a landlord the same right of coming forward at any time before proceedings have been instituted against him, and by filing the statement escape the penalty. The Government are quite prepared to go to that length and to give landlords the same privilege of escaping penalty as is afforded in the proviso to section 24 to

tenants. But, even more than that. We are quite prepared, in dealing with the proviso in section 24, to insert words which would give a tenant a further opportunity than is given in that proviso for escaping the penalty to which he is liable. We propose to introduce the words 'or in the discretion of the Collector at any time after such institution.' The proviso in section 24 gives tenants the opportunity of escaping a penalty by coming forward before the institution of proceedings. We propose to extend that power of escaping the penalty by inserting a few words which will at the discretion of the Collector allow a tenant to escape a penalty even after the institution of proceedings, and we are willing, in extending the proviso to that extent, to make it applicable to both sections. It seems to me that when we do that we make the pressure on the tenant, and in certain cases on the landlord, as light as it can be made compatible with the application of some pressure. I do not see how we can go further without whittling away the whole of the pressure, except such as is of an automatic character. Therefore I move that the proviso to section 24 be struck out, and that at the end of section 25 the following proviso be inserted:—

'Provided that no person shall be fined under this or the last preceding section who at any time prior to the institution of proceedings thereunder, or in the discretion of the Collector at any time after such institution, has filed the statement required by section 5 or given the notice required by section 6.'

"I am not prepared to relax the pressure upon the landlord or upon the tenant any more than this."

The Hon'ble SIR GRIFFITH EVANS said:—"The object of this amendment is shortly this: There are several amendments connected with these sections on the agenda, but I only refer to them for the purpose of explanation. One of these amendments relating to section 24, which relates to tenants, has for its object that no fine should be inflicted until notice to comply with the provisions of section 6 has been served upon the raiyats. But it should be remembered that it will be impossible to know whether the raiyat has complied with the provisions of that section or not, because in 99 cases out of 100 nobody knows except himself and his transferee whether he has made a transfer of his tenancy or not, until in the course of some proceedings connected with the tenancy it transpires that that has been done. Moreover, it will be exceedingly difficult in practice to serve landlords with these notices, and the same remark

which applies with regard to landlords applies to small tenure-holders. It has been thought that we might also give a discretion to the Collector, when he institutes a prosecution, to dispense with the imposition of a fine when the statement has been filed or the notice given. Considering that the object of the fine is to put pressure upon the landlord or tenant, as the case may be, that what is wanted is in the case of the landlord to get the return, and in the case of the tenant what is wanted is for him to give the notice, there is no intention to inflict a fine when the object of the law has been complied with. It is necessary to put some pressure on raiyats beyond the automatic pressure. As has been pointed out, the disabilities under the automatic sections will be two-fold. First, we say to the landlord-raiyat, you shall not be allowed to sue for rent until you have given notice, so that the landlord-raiyat will not be able to recover or get a decree against his under-tenants. Next, we say to the ordinary occupancy-raiyat you shall not give evidence of your right of occupancy until you have given notice; but there are many cases in which tenants would not be much affected by this pressure, because, after the *khatian* and record of rights, there will not be much room for doubt. No doubt in the case of occupancy-raiyats, who are at variance with the landlord, and those who have under-tenants, the automatic pressure would apply to a certain extent, but in all other cases, which will probably be the majority, the pressure would not be felt. There was therefore no other pressure except the power of fining. But I am exceedingly anxious that we should not harass the raiyats, because our attempts to benefit them have not always succeeded. In this case we desire that it should be understood, and appear on the face of the law, that the intention is to provide a means of threatened pressure, and that it is not desirable that punishment should be enforced except where it is absolutely necessary, and to show those concerned that there is a means of enforcing compliance with the law, if they will not otherwise comply with it. We do not want to enforce the penalty, but we want to have the power to tell them—you must do this or you will be fined. And that is what His Honour the President meant when he said that the amendment proposed by the Hon'ble Member in charge of the Bill should be first considered, so that Hon'ble Members, who have given notice of other amendments, might consider whether they would not be satisfied with what is proposed to be done and withdraw their amendments. That was a matter which would come on afterwards. The motion now was the acceptance of the Hon'ble Mr. Buckland's amendment."

[*Maulvi Muhammad Yusuf; Mr. Ghose; Babu Surendranath Banerjee.*]

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"In this instance also I am thankful to the Government for having accepted my suggestion, the reasons for which have been so fully stated by the Hon'ble Mover of the amendment. But there is one reason which also weighed with me, namely, that the object is to secure registration and not to secure a conviction for non-compliance with the provisions of the law. When the alternatives are registration or prosecution with certainty of conviction, tenants will no doubt accept registration, and thus this amendment will promote the object which this Bill has in view, namely, the registration of tenures."

The Hon'ble MR. GHOSE said:—"It seems to me that the amendment proposed by the Hon'ble Member in charge of the Bill is probably sufficient to meet the views of those Hon'ble Members who think the Bill is defective in this respect as far as section 24 is concerned. There may be some difficulty in knowing what transactions have taken place between raiyats, and as the learned Advocate-General observed they may only transpire in the course of some other proceedings long afterwards. But I venture to think that section 25 stands on a different footing. The only notice the landlord is supposed to receive is by a notification in the Calcutta Gazette which is referred to in section 5 of the Bill, and, as pointed out by the Hon'ble the Advocate-General, there are many landlords of various degrees, including small tenure-holders and others, who do not read the Calcutta Gazette very assidiously; therefore I think that in the case of zamindars who are required to submit returns of changes in their estates, some notice should be given to them personally, rather than that the law should provide that a notification in the Calcutta Gazette is sufficient for the purpose of imposing a penalty. In connection with this amendment I would ask the Government to consider whether, in the case of landlords, a mere notification in the Calcutta Gazette ought to be held to be sufficient for the purpose of imposing a penalty for non-compliance with an order of which the landlords would be wholly ignorant."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I am very grateful to the Hon'ble Member for introducing this amendment. It takes the matter a stage further; but I am not prepared to abandon the amendment of which I have given notice. I would appeal to him to look at the matter from the point of view I desire him to look at it. The Hon'ble the Advocate-General has

asked how are we to know whether a tenant has made a transfer or not. I am not prepared to accept that argument, because, preparatory to the institution of proceedings, the Collector must know that notice has not been given. If the Collector institutes proceedings against the tenant, it must be on the basis of his knowledge that notice has not been given by the tenant. If he knows that the tenant has not given notice, would it not be the simplest thing for the Collector to serve notice on him to comply with the provisions of section 6, and then, if the tenant omitted to comply with the requisition, there would be time enough to prosecute him. With reference to landlords, so far as the provisions of the Local Self-Government Act are concerned, I understand that notice is given by beat of drum in the locality, but a similar concession is not shown to the landlord under the provisions of this Bill. This is a new measure, and it ought to be worked in such a manner as not to operate with severity on raiyats and landlords. I would therefore ask the Hon'ble Member to reconsider the matter from the point of view to which I have referred."

The Hon'ble MR. BEIGHTON said:—"The arguments of the Hon'ble Mr. Ghose and of the Hon'ble Babu Surendranath Banerjee would, it appear to me, if accepted by the Council, be absolutely destructive of the Bill. The whole principle of the Bill is that the initiative should be taken by the raiyat and not by the Collector. But the Hon'ble Members want that the only real penalty imposed by the Bill should not be put into force until notice to the raiyat has emanated from the Collector. In that case no raiyat will ever come forward to give notice of any mutation until he is aware that he is about to be fined for not doing so. Such a provision will, I think, absolutely stultify the whole object of the Bill, for it is only in an infinitesimal number of cases that the Collector can possibly become aware of the transfer of any holding or part of a holding. With regard to the observations which fell from the Hon'ble Mr. Ghose as to the ignorance of zamindars as to notifications which appear in the Calcutta Gazette, I must remind the Hon'ble Member that ignorance of the law is never held to be an excuse for non-compliance with its provisions, and it would be altogether subversive of any system of law if it were so held. But the Hon'ble Member knows as well as I do that in practice no injustice is really perpetrated. He must be familiar, for instance, with the vast number of penalties for technical breaches of the law which have been imposed by recent legislation in England under the Corrupt

Practices Act for the election of Members of Parliament and Members of Municipal Corporations. It is impossible for any human being to be cognizant of all the complex details which modern ingenuity has devised in order to protect the purity of Local Administration, and these are constantly being violated by candidates who have not the least idea they are doing anything wrong. But what is the result? The Hon'ble Member must have seen reports in English newspapers which show how leniently such cases are dealt with in the Courts. In such cases of innocent transgression, either the offender is exempted from any penalty or a merely nominal fine is imposed. Similarly, if any case of hardship should arise under this section, I have no doubt that the Magistrate would take into consideration the fact that it was virtually impossible that a petty landlord could have heard of the notification in the Calcutta Gazette, and would impose a nominal fine. I trust the Hon'ble Member will see that the motion which the Hon'ble Member in charge of the Bill now proposes is really quite sufficient to meet all that can be expected from the Government."

The Hon'ble THE PRESIDENT said:—"I am sorry to perceive that the speech of the Hon'ble the Advocate-General has not had the effect which I expected it would, but perhaps the additional weight of the remarks which fell from the Hon'ble the Legal Remembrancer may have carried conviction. I was surprised to find on the agenda the amendment No. 8, to the effect that 'no person should be fined under section 24 except after notice served upon him to comply with the provisions of section 16,' because it is to my mind absolutely destructive of one of the important principles of the Bill. It will be perfectly fatal to the scheme if, in addition to the small automatic pressure provided by the preceding clause, no penalty is to accrue until the Collector has sent a notice warning the raiyat that he has failed to give notice of mutation. And with regard to zamindars, I would remind Hon'ble Members how numerous they are and how difficult it would be to issue notice to all of them. Time after time the Legislature has attempted to find means to reach them, but we know that the efforts of the Legislature have generally been a failure, and we should not succeed in having notice served upon everybody. I ask Hon'ble Members to accept this view and to trust to the discretion we place in the Collector. We are drawing special attention to the fact that defaulters are not expected to be fined in every case. I think, looking at it as reasonable men, we ought to be satisfied that the provision

is one which in all probability will meet the case as far as any legislative procedure can meet the case of future events which never actually accord with our anticipations."

The Motions were put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE said:—"After what has fallen from Your Honour, it would have been a matter of very great gratification to me if I found it consistent with my duty to withdraw both the amendments of which I have given notice, but I feel it incumbent on me to move first that the following further proviso be added to section 24:—

'Provided further that no person shall be fined under this section except after he has been served with a notice to comply with the provisions of section 6.'

"It has been observed by the Hon'ble the Legal Remembrancer that ignorance of law is no excuse, but in applying this principle to this country, you must take into consideration the condition of the people, and especially the position of the agricultural population. They live in little hamlets of their own—in a little world of their own—and in utter ignorance of what is taking place in the world outside and in this Council. They do not know what their legal obligations are, and it would be cruel to punish them for an offence which is the creation of law. What I contend for is that they should be allowed the opportunity of complying with the law before they are prosecuted, or, in other words, a notice should be served upon them, before they are prosecuted. I have heard it stated that we ought to put some sort of pressure upon them. I think this notice will serve as a sort of pressure, and in the course of time they will become aware of their duty under the law."

The Hon'ble MR. BUCKLAND said:—"After the lengthened argument which has taken place upon the motion which I put before the Council, there is really not much to say. I entirely object to the principle which this amendment tries to incorporate into the Bill, namely, that when a man has neglected his duty and has rendered himself liable to punishment, he has to be given notice before he can be punished. If that principle is to be adopted, we shall never get any notices of mutations except after the service of such notice. An attempt to introduce such a principle was made the other day in connection with another measure, and it was successfully resisted. I therefore hope we shall not accept this amendment, but retain what I consider ample provision for allowing innocent people to escape the penalty."

[*Sir Griffith Evans ; Maulvi Muhammad Yusuf.*]

The Hon'ble SIR GRIFFITH EVANS said:—"I have one word more to say in connection with this matter. These raiyats, as we know, will not do anything new unless there is pressure. It is a matter of history what occurred when an attempt was made to enforce an exchange of *pottahs* and *kabuliyats*. The Regulation stood for fifty years uncomplied with and was then repealed. We know perfectly well and we sympathise with the strong feeling they have against any innovation. It is inconvenient for a raiyat to leave his work; it is inconvenient for him to go near any of these offices at all, and that for various reasons: he will not do it without real pressure being put upon him. It is clear that we are not able to serve separate notices upon millions of raiyats, and yet the proposal is made to tell the raiyats that if they are not affected by the automatic pressure provided in the Bill, there will be no pressure put upon them, and there is no reason for them to give notice of mutations; it will be time enough, they will be told, for you to go when you receive an order from the Collector announcing to you that a prosecution is about to be instituted against you. To accept this amendment will be as much as to say that this attempt to enforce registration of mutations is to be abandoned."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"After all that has been said and done in connection with this subject in Council to-day, I submit that this amendment ought to be rejected. What is reasonable and proper in connection with this amendment has already been provided in the amendment to section 24. The gist of the present amendment is that there should be notice before conviction; but that is already provided for in a much better form in the amendment which has been adopted in connection with section 24; so that the Collector is authorised, even after the institution of proceedings, to refrain from imposing a fine: the summons gives the tenant notice of his default: he can cure the default by complying with the law even after receiving the summons; if he does not care to cure his default, he must be fined. What further notice should be given to him before the imposition of a fine I fail to comprehend: in the summons with which he has been served, he has already got a notice that he has been in default. After having received the summons, knowing that he has to receive no further notice, the defaulter will not assume a defiant attitude, but on the other hand he will be repentant, and he will rather hasten to comply with the law than run the risk of a conviction in the prosecution. But if he knows that a further notice would be necessary before

a fine is imposed in accordance with the amendment under consideration, then he may simply sit quiet and do nothing to cure his default. Without this amendment, he will try his best not to remain any longer in default: with the amendment he will persist in his default. Only two alternatives should be before the tenant, namely, action on his part to cure his default or conviction; this amendment unwisely gives him a third alternative."

The Hon'ble MR. LYALL said:—"I venture to think that the appeal *ad misericordiam* has no real weight. All who know the Mufassal well, as several Hon'ble Members present can claim to do, know how much the common people talk about *Mokudummas*, Courts, Thanas, Munsifis and the like. Your Honour has received repeated petitions upon any attempt to close a Munsifi or a Thana, and when a new registration office is opened, all the country round about know why it is opened; it will be talked about in the village, and will be a matter of common rumour. Therefore there can be no fear that the raiyats will not know why the new sub-registration offices are established and for what purpose they have to go to them."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"Having seen that the sense of the meeting is against the amendment, I beg leave to withdraw it."

The Motion was, by leave, withdrawn.

The Hon'ble BABU SURENDRANATH BANERJEE also moved that the following proviso be added to section 25:—

'Provided that no person shall be fined under this section except after he has been served with a notice to comply with the provisions of section five; the provisions of the Civil Procedure Code in respect of the service of notice shall apply to the service of notice in such a case.'

He said:—"Section 25 provides that a notification is to be issued in the Calcutta Gazette, and on the issue of such a notification zamindars have to give notice of every change of tenancy which occur in their estates, and if they fail they are to be prosecuted and punished. I think this is a hard measure to mete out to the zamindars. I should like to know how many zamindars read the Gazette. I should like to know how many who are not zamindars wade through the pages of the Gazette. An absentee landlord may be ignorant of a general notification issued in the columns of the Calcutta Gazette. He may thus be

punished through no fault of his. If a personal notice were issued upon him he would have no excuse. I have referred to the Local Self-Government Act under which zamindars have to submit certain returns, and in respect of those returns notice is given. At any rate some provision of the same kind ought, I submit, to be made in this Bill."

The Hon'ble MR. BUCKLAND said:—"The Hon'ble Member is very sanguine if he thinks that a mere notice to the zamindar will have the effect of making the Act more acceptable to him. Most likely the notice will be treated in the way that other notices are treated. I believe the arguments for and against this motion have been practically exhausted. I shall therefore only repeat that the Government is distinctly opposed to this notice being required."

The Hon'ble MR. GHOSE said:—"I desire to support this amendment. I have tried to make my position clear. I tried to make myself understood that while I thought the amendment of the Hon'ble Member for the Corporation in regard to section 24 is not really necessary, and while I was not prepared to go as far as he proposed with regard to notice being served upon a raiyat calling upon him to give notice of a transfer effected by him, I tried to distinguish between the two cases—the case of the raiyat who makes the transfer, and the case of the zamindar who is not a party to the transaction, but who nevertheless may be required by a notification in the Calcutta Gazette to make a return, and especially in the case of those zamindars who do not know English or whose amlah do not know English. The Hon'ble the Legal Remembrancer charged me with endeavouring to mislead the Council by pleading ignorance on the part of zamindars, and he reminded me that ignorance of the law is no excuse. I beg to assure him that nothing was further from my intention than to plead ignorance of the law on behalf of any one. But here we are not sitting in judgment over any zamindar; we are legislating; we are providing the machinery for the working of this Act; and as legislators we ought to take care that adequate provision is made for the purpose of bringing these new obligations to the knowledge of the zamindars before they are dealt with as offenders under this law; and I threw it out as a suggestion that a notification in the Calcutta Gazette is not sufficient in my judgment, and I think that some proceeding might be taken with little or no trouble to the Government, but with great advantage to those

who will be liable to punishment for non-compliance with a requisition of which they had never heard. And, following the analogy of the Road Cess Act, I think nothing would be easier than by beat of drum to make a proclamation, so that the fact may be made known; and if, after being made acquainted with his new obligations under the law, a zamindar still persists in disregarding the obligation, I can see no objection to his being punished. But I thought then, and I think so still, that some more effectual notice than a mere notification in the Gazette might be given with great advantage. I challenge the Legal Advisers of the Government to point to a single instance in previous legislation on a similar subject requiring returns from zamindars, where a notification in the Calcutta Gazette has been deemed sufficient, and I shall be very much surprised if they are able to find any instance where it is not provided that new obligations of this character imposed upon zamindars should be brought to their knowledge by service of notice or by proclamation."

The Hon'ble SIR GRIFFITH EVANS said:—"There is a proviso to section 14 of the Road Cess Act which provides for the making of a proclamation which I think will cost the Government very little trouble, and which I think will meet the views of those who press the hardship to the zamindar of getting no information except through the Calcutta Gazette. I propose to insert similar words as sub-section (*2*) of section 5."

The Motion was, by leave, withdrawn.

The Hon'ble SIR GRIFFITH EVANS, by leave of the Council, moved that the following be inserted as sub-section (*2*) to section 5:—

'(*2*) The Collector of the district shall cause such notification to be published by affixing a copy thereof in some conspicuous place in the office of such Collector, in every Civil Court, in every police-station, and in the office of every Sub-divisional Officer within the district, and in any other manner which the Local Government may from time to time direct.'

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND said:—"I beg leave to move a verbal amendment in sections 24 and 25. In those sections, and in the proviso which was added to section 25 on my motion, the word 'Collector' is used, but in other parts of the Bill the expression 'Collector of the district' is used. My motion there-

[*Mr. Buckland ; Mr. Ghose ; Babu Surendranath Banerjee ; Mr. Lyall ; the President.*]

fore is, that in sections 24 and 25 and in the proviso to section 25 the words 'Collector of the district' be substituted for the word 'Collector' wherever it occurs."

The Motion was put and agreed to.

The Hon'ble MR. GHOSE, by leave of the Council, withdrew the motion of which he had given notice, that section 25 of the Bill be omitted.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in line 6 of section 29, the words beginning with "and the amounts" to the end of the section be omitted, and that the following be substituted in their place:—

'and allot the cost of such survey in the following proportions:—

'One-fourth to be borne by the Government, five-sixteenths by the raiyats, including tenants, rent-free owners and occupiers, and seven-sixteenths by the zamindars; and the Local Government may specify the date from which the expenses aforesaid shall be recovered, and also the rate per acre based upon the aforesaid proportions to be paid by the said proprietors, landlords, tenants and rent-free owners and occupiers.'

The Hon'ble MR. LYALL rose to order. He said:—"I beg to ask the Hon'ble the President whether, under the provisions of section 19 of the Indian Councils Act, this motion can be made without the previous sanction of the Governor General in Council?"

The Hon'ble THE PRESIDENT said:—"I think that the provision to which the Hon'ble Mr. Lyall has referred does not apply to the motion before the Council, and that the amendment is one which it is in the power of the Hon'ble Member to propose."

The Hon'ble BABU SURENDRANATH BANERJEE continued:—"It was made a matter of complaint when the Bill was referred to the Select Committee that an allotment of the costs was not specifically made. The Secretary of State has ordered that $\frac{1}{4}$th of the cost of the Bihar Survey should be borne by the Government, $\frac{5}{16}$ths by the raiyats, and $\frac{7}{16}$ths by the zamindars. The object of this amendment is to state specifically the proportion of the cost which each party should bear, and in proposing this amendment I have followed the recommendations of the Secretary of State. It is a matter of the greatest importance that

the question of the proportions in which the cost of the survey and settlement should be paid should not be left undefined. These are my reasons for bringing forward this amendment."

The Hon'ble MR. BUCKLAND said:—"The argument of the Hon'ble Member would have some validity if this were an Act applicable to the Bihar Survey and Settlement only and not to any other survey and settlement. The Secretary of State's Despatch, in which he laid down the proportions to be borne by the several parties concerned, is perfectly well known, but that Despatch relates only to the case of the Bihar Survey, and it is not likely that the injunctions contained in that Despatch will be disobeyed; therefore, in so far as this amendment refers to the Bihar Survey, we can give the Hon'ble Member an assurance that the apportionment laid down in the Secretary of State's Despatch will be observed. But it is quite impossible to say now that that proportion will be maintained in the case of every other survey, and it is unreasonable to make such a request. The effect of adopting this amendment would be that in every survey and settlement which may be hereafter made, the Government should undertake to pay a quarter of the bill. That would be quite unprecedented, and therefore the motion as it stands must, I think, be decisively opposed; as far as the Bihar Survey is concerned, it is not likely that the Secretary of State's orders will be overlooked."

The Hon'ble MR. GHOSE said:—"I think it will save time if I were to support my hon'ble friend's amendment. I think it only right that the proportions to be borne by the three parties should be embodied in the law, and that it should not be left entirely vague and indeterminate as to what proportion should be borne by the State, or whether any proportion should be borne by the Government, and what proportion should be borne by the raiyats and by the zamindars respectively. There is absolute unanimity of opinion on this subject in the reports received from all the public bodies who have been consulted on the subject of this Bill. I will read to the Council a short extract from the letter of the Bengal Chamber of Commerce on this point. They say:—

'The proportion in which survey expenditure incurred in any district is to be divided between the State, landlords and tenants is spoken of, but is not made clear. It is only provided that the distribution of the Cess shall be made under certain rules to be framed, as the Committee would recommend, by the Local Government, but the proportion is not stated. The Committee comment upon this omission. The proportion has been fixed in Bihar and

has received the sanction of the Secretary of State, and they can perceive no objection to its being repeated in this section.'

"That is exactly what my friend's amendment proposes to do, instead of leaving it to Your Honour's Successor on the recommendation of the Collector of the district, who may recommend that the whole be thrown on the zamindar, or if he is a *pro* zamindar, he may recommend that the whole expense be borne by the raiyat; or he may recommend that no portion of the expense should be borne by the Government. I submit that the recommendation of so high an authority as the Bengal Chamber of Commerce ought to be adopted."

The Hon'ble MR. BEIGHTON said:—"The Hon'ble Member has failed to notice that in the interests both of the raiyats and the zamindars it is better that the proportions in which the expense should be borne should not be stereotyped in the Bill. It often happens that a survey is necessary on behalf of one of the parties only. A survey, for instance, may be ordered by the Collector in a case where there is a combination among tenants not to pay rent. Is it fair in such a case that the landlord should be saddled with even one-fourth of the cost? Or take a case where a landlord has applied for a survey because the accounts of his property are in a state of confusion. Is it fair that in such cases as these one party or the other should pay the precise proportion of cost which has been decided in the case of the Bihar Survey? I think it would not be at all to the interest of either raiyats or zamindars that the proportions of cost to be borne by them respectively should be irrevocably fixed, whatever may be the circumstances of each case. Then again let me draw the attention of the Council to the case provided for in section 101 (1) (*b*) of the Bengal Tenancy Act where the Local Government may order a survey in order to avert a serious dispute between the tenants and their landlords. Does the Hon'ble Member seriously contend that in such a case as this, without any reference to the merits of the case or the party at default, the zamindar is to pay 7 annas, the tenant 5 and the Government 4 annas? One would imagine there was some particular virtue in the combination 7, 5 and 4 which the Hon'ble Member wishes to perpetuate. I cannot but hope that the Council will see that it is essential to leave it to the Government to decide under the circumstances of each particular case how in fairness to all parties the expense ought to be borne."

[*Sir Griffith Evans; Babu Surendranath Banerjee.*]

The Hon'ble SIR GRIFFITH EVANS said:—"Leave, I take it, has been obtained from the Government of India to bring in this Bill, because it affects to a certain extent the Bengal Tenancy Act, which was passed by the Governor General in Council. Section 114 of that Act provides that expenses incurred in carrying out the provisions of this Chapter in any local area, or such part of those expenses as the Local Government may direct, shall be defrayed by the landlords and tenants of land in that local area in such proportions as the Local Government, having regard to all the circumstances of each case, may determine.

"That is the rule laid down by the Bengal Tenancy Act, and it is matter for consideration whether, the Government of India not having given leave for a new departure of the kind here proposed which would practically operate as a repeal of section 114 of the Bengal Tenancy Act, the result would not be to jeopardise the whole Bill altogether. I cannot say that the passing of this amendment is not within the competency of the Council, but I think it is hardly open to us at this stage, after it was submitted to the Government of India in a particular form, to make a new departure in the way now proposed."

The Hon'ble BABU SURENDRANATH BANERJEE in reply said:—"It would savour almost of impertinence if I were to argue a point of law with the learned Advocate-General and the learned Legal Remembrancer, but I beg leave respectfully to submit that we cannot enact any law calculated to supersede the provisions of the Bengal Tenancy Act. We have not the competency, even though we had the inclination, to do so. All that I contend for is that all Cadastral Surveys must be governed by the provisions of this Act; therefore the remarks of the learned Advocate-General, so far as I can see, are irrelevant to the issue before us. I say this with great deference, but I am bound to put this view before the Council."

The Hon'ble SIR GRIFFITH EVANS explained:—"The expenses which will be incurred under this Act are expenses for maintaining Records of Rights made by virtue of the Bengal Tenancy Act. We are dealing with the expenses of a Survey and Settlement of Rights which is to be done not under the authority of this Act, but under the authority of the Bengal Tenancy Act."

[*The President.*]

The Hon'ble THE PRESIDENT said:—"I think the fact which has been mentioned by the Hon'ble Mr. Ghose, namely, the great unanimity evinced by the public bodies who have commented upon this provision of the Bill, only shows how their thoughts have been concentrated on the one leading case of North Bihar, while there are many other classes of cases which have to be borne in mind by those who have to work the Bill. The Hon'ble the Legal Remembrancer has pointed out one such class of cases to which the amendments both of the Hon'ble Babu Surendranath Banerjee and of the Hon'ble Mr. Ghose would not apply, namely, where the proprietor applies for a Cadastral Survey on account of the lawlessness and contumacy of the raiyats, or on account of the confusion into which a particular estate may have fallen. There is another class in which the Magistrate applies for a settlement-survey as the only means of settling long-pending and aggravated quarrels between proprietors and tenants. In such a case it would be quite unreasonable to apply the particular ratios applied by the Secretary of State in the case of the Bihar Survey. That case being the leading case has caught the public eye, and especially the eye of the Bengal Chamber of Commerce, which naturally has no experience of the many different kinds of surveys under the Tenancy Act. Where a settlement-survey is applied for on account of disputes between landlords and tenants, it would not be reasonable that the Government should pay any portion of the cost. A great amount of survey work is done under the Tenancy Act in Government Estates and in Wards' Estates; and the advantage derived from such surveys is so great that generally the whole of the cost is laid upon the estate, and nothing at all falls upon the raiyats. But if the raiyats are found to be extremely unreasonable; if they prolong the work and increase the expenditure by their recalcitrancy, the Government may well say to them, 'you must bear a portion of the cost.' These facts show the importance of adhering to the principle which the Hon'ble the Advocate-General has supported, that it is absolutely necessary to have a free hand in each particular case. The case of the North Bihar Survey would by no means serve as a precedent in any other classes of cases. I am hopeful that after hearing this explanation the Hon'ble Members will be content to withdraw their amendments, because it will be seen that they are quite impracticable, and would produce results which are not anticipated by themselves."

The Motion was put and negatived.

[*Mr. Ghose; Babu Surendranath Banerjee; Mr. Buckland.*]

The Hon'ble MR. GHOSE, by leave of the Council, withdrew the motion of which he had given notice that in section 29, the words within brackets from "in such proportion" to "determine" be omitted, and that the following words be substituted:—

'In the proportion of 7 annas by the proprietors and landlords and 5 annas by the tenants.'

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following proviso be added to section 29:—

'Provided that pending the final determination of the total expenses which have been incurred in making a survey, the accounts shall be published in the local gazette, and the parties liable to contribute towards the expenses shall be allowed the opportunity of submitting their representations in connection therewith.'

He said:—"This amendment is somewhat loosely worded, but if the principle is accepted, I should be happy to re-draft it with the assistance of the Council. I maintain that those who contribute towards the cost of the survey have a right to know how their money is spent; and, moreover, I submit that the publication of the accounts will go far to ensure economy. The right which my amendment seeks to confer upon those who contribute towards the cost of the survey will go still further to promote the same result. I am informed that, in connection with the Cadastral Survey carried on in the estates of the Maharaja of Tippera, there was a good deal of extravagance. I have heard it stated that boundary stones to demarcate the villages which could be had in the bazar for nine annas a piece were charged for at the rate of nine rupees a piece. I have heard that from a distinguished pleader from Tippera; but, however that may be, I submit that the accounts should be published in order that those who contribute towards the cost of the survey may have an opportunity of submitting any representations they think fit in connection with the matter."

The Hon'ble MR. BUCKLAND said:—"I regret that I must disappoint the Hon'ble Member again. It is really impossible to grasp what this demand really amounts to. It is very difficult to carry out these operations, and to bring them to a conclusion. The Hon'ble Member may rest assured that all that is necessary is done to ensure economy, but it will be a tremendous addition to our labours if it is necessary to publish the bill of charges, and to

[*Mr. Buckland; Maulvi Muhammad Yusuf; the President.*]

allow every raiyat to come forward and submit his representations in a formal manner. If we allowed anything of this sort to be done, it would perhaps double and treble the amount of work necessary to carry out these very large survey and settlement operations. I can see no harm—in fact we do it now—in publishing in the Calcutta Gazette the Government Resolution regarding the survey which will sufficiently inform the public, and which makes known generally what have been the total charges incurred, and what is the rate of cost per acre; and the expense devolving upon any raiyat can be calculated therefrom. Nothing of real importance is held back, and it is pretty well known beforehand that the expense ought not to amount to more than an average of 8 annas per acre divided among all the parties. We do all we can to keep down the expense, and no good would be gained by allowing the raiyats to contest every small point. Nothing will involve more trouble on all parties concerned than to have every small item of expense disputed, and to have elaborate arguments and discussions. I regard this proposal as altogether unnecessary, and I think my hon'ble friend may trust us to keep down charges as low as possible. I must therefore oppose the amendment."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"I consider this amendment to be a very reasonable one. It deals with two questions —*first*, the publication of the accounts in the Calcutta Gazette, and *secondly*, the opportunity to submit representations. The two points stand on different bases. As regards the first point, I do not see any objection to the amendment. As regards the second point, there might be some objections to allow thousands of persons, whether zamindars or raiyats, to make representations; but when we are going to tax their pockets, then the objection to give them an opportunity to submit their representations does not seem to be very formidable."

The Hon'ble THE PRESIDENT said:—"I think this is an amendment which should not be passed by the Council. It proposes to put the Government in a position which they ought not to be asked to occupy. It will create a new procedure contrary to what exists in similar cases. For instance we carry on embankment work under the Embankment Act, and in many cases we charge proprietors of estates protected by such embankments with the exact cost spent for their maintenance from year to year. Nobody has ever asked that the accounts should be furnished in detail, nor have I ever heard any suggestion that the expenses

have been overcharged, or that the charges have been unduly distributed. Moreover, the amendment as it has been drafted will not meet the Hon'ble Member's wishes, unless the accounts are published in great detail. We do publish the accounts in some detail, and in the next Calcutta Gazette the Hon'ble Member will see the accounts of the survey and settlement work carried on last year show with considerable fullness, and under different heads. That will give as much information as the statistician requires to understand the nature and cost of the work, and to form a judgment whether the operations have been carried out with an eye to economy or with extravagance. With regard to the instance of excessive charge, which the Hon'ble Member has given, I am sure that he has stated it as he has heard it from the Pleader of Tippera to whom he referred; but no information has reached me on the subject; and while it is easy to make such assertions, it is impossible to refute them at a moment's notice and without further enquiry. But all that I have heard justifies me in saying that it is presumable that no such extravagance has taken place. It is true that the cost of the survey in Tippera has been more expensive than the average, but there are local causes, such as complicated tenures and conflicting interests, which have made that inevitable. I think the Council will be justified in trusting the Government to take care that economy is observed in carrying out surveys and settlements. We have published our estimate, which is that we desire to work at the average cost of 8 annas per acre. To a certain extent my personal credit is pledged to carry that estimate out, and every nerve of the Government is strained to arrive at that result, and every possible endeavour will be made to make the work of the department economical. I therefore am obliged to say on the part of the Government that I cannot advise the Council to accept this amendment."

The Motion was put and negatived.

The Hon'ble MR. BUCKLAND moved that in section 30 the words "and landlords" be omitted. He said:—

"This is a verbal amendment, the words 'and landlords' having crept in by mistake. We only want to provide that proprietors of estates should pay their share of the expense at the same time as they pay their revenue. The term 'landlords' covers many other persons besides proprietors, and includes raiyats. I therefore propose to strike out the words 'and landlords'."

The Motion was put and agreed to.

[*Babu Surendranath Banerjee; Mr. Buckland; Mr. Ghose.*]

The Hon'ble BABU SURENDRANATH BANERJEE moved that in section 30 for the words "together with such instalment of land revenue as the Local Government may direct" the words "to the Collector or such other officer as the Local Government may direct" be substituted. He said:—

"Here the cost of the survey is treated as part and parcel of the land revenue. If a Collector is inclined not to accept the land revenue unless the cost of the survey has been paid, the estate may be sold up. This seems unnecessary, having regard to the fact that arrears of payment under this Act can be recovered as a public demand. My amendment seeks to rectify this defect."

The Hon'ble MR. BUCKLAND said:—"I think the Hon'ble Member has gone quite out of his way to pick a hole in this section. He is afraid that an amount due from a proprietor under this Act will be regarded as part and parcel of the land revenue, but the very words which have been used show that it is distinct from land revenue. The section says that the amount shall be paid *together with* such instalment of land revenue, so that it is stated as distinctly as possible that it is another thing from an instalment of land revenue. The object of the section is that, whereas proprietors have to pay their land revenue, it should be open to the Government to say that at such *kist* day as the Government may think fit the amount of the survey settlement charges due from the proprietors shall be paid at the same time as an instalment of land revenue, and I think there is no hardship in that. It is a very ordinary sort of provision to make: and we particularly go on in the same section to say that arrears of the survey settlement charges shall be recoverable under the certificate procedure, so that there will be no question of selling up an estate for default in payment of these charges. I think the distinction is as clear as possible, and that the amendment is unnecessary."

The Hon'ble MR. GHOSE said:—"I am not quite convinced that the danger which is apprehended by the Hon'ble Mover of the amendment is so entirely without foundation as the Hon'ble Member in charge of the Bill seems to think. No doubt it is expressly laid down in section 30 that arrears of payment under this section shall be recovered under the certificate procedure, but for my part I fail to see the necessity of coupling the payment of this debt with the payment of any particular *kist* of land revenue. The association of a

[*Mr. Ghose; Mr. Buckland; Mr. Lyall; Babu Surendranath Banerjee.*]

particular *kist* of land revenue with any other debt may imply that the non-payment of the one will involve the non-receipt of the other, and I should not be surprised if the Collector were to put that interpretation upon it, and then by the operation of the Sunset Law the result apprehended by my hon'ble friend will take place. For my part I have not yet been able to understand, nor has the Hon'ble Member in charge of the Bill attempted to tell us, what necessity there is for associating the payment of arrears recoverable under the certificate procedure with the payment of land revenue. Why should not the arrears be recoverable, like any other public demand, wholly apart from a *kist* of land revenue? Therefore, there may be the danger of the Collector under this section declining to receive a *kist* of land revenue unless at the same time the arrears due under this Act are paid."

The Hon'ble MR. BUCKLAND said:—"With Your Honour's permission I would explain that the simple object is to provide that the amounts due under this Act shall be paid *at the same time* as the land revenue. It would be for the convenience of all parties that, when the land revenue is being paid in, the proprietors should at the same time pay in these amounts."

The Hon'ble MR. LYALL said:—"I desire to add one word as to the reason why I agreed to this section. Without it there is nothing in this Bill or in the Tenancy Act that makes the payment by a proprietor due. Without fixing some date on which the payment is due, it cannot be recoverable as a public demand. All that I hold to be intended by this section is to fix the date when the payment becomes due; and it was considered that it would be convenient to the proprietor to pay it at the same time as an instalment of revenue. No Collector can refuse to receive land revenue, provided it is paid before sunset of the last day of payment. He cannot refuse to receive it from anybody, whether connected with the estate or otherwise; nor can he refuse any payment, however small in amount, provided it is offered before the latest time of payment. Therefore, the fear which has been expressed by the Hon'ble Mover of the amendment that the Collector might refuse payment is not a well-grounded one."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"After the discussion which has taken place as to the purport of the section, I beg leave to withdraw my amendment."

[*The President; Mr. Buckland; Babu Surendranath Banerjee.*]

The Hon'ble THE PRESIDENT said:—"I think the Hon'ble Member is wise in wishing to withdraw this amendment, because, if there was any danger of misconstruction of the meaning and intention of the section, this discussion will clear it away. Putting it briefly, the real object is to prevent the zamindar from being called upon to pay his share of the cost, except at a time when he has to pay an instalment of land revenue. It is entirely for the convenience of the landlords that the section has been framed."

The Motion was, by leave, withdrawn.

The Hon'ble MR. BUCKLAND moved that in section 31 the word "tender" be substituted for the word "receipt." He said:—

"This is a mere verbal amendment. The section provides that the amount due from a tenant, &c., shall be paid by him on 'receipt' of the extract from the Record of Rights. Suppose that he will not receive the extract. We propose that he shall be liable to pay the amount due from him, when the extract from the *khatian* is 'tendered' to him. You may take an extract to the raiyat, but you cannot make him receive it; therefore I propose to substitute the word 'tender' for the word 'receipt.'"

The Motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in line 4 of section 34 the words "two months" be substituted for "one month."

The Hon'ble MR. BUCKLAND said:—"The section of the Registration Act upon which this section of the Bill is based is section 72. I do not know whether the Hon'ble Member has referred to that section, but there he will find that an appeal made from a Sub-Registrar's decision to the Registrar to whom he is subordinate, must be made within thirty days from the date of the order of the subordinate officer, and we have followed that principle. If thirty days have been found sufficient in the Registration Act of 1877, we anticipate that it will be found quite sufficient under this Bill, and I see no reason for extending the time. In a matter of this sort, the best thing is to adopt the precedent of the existing law, of which we are following the procedure as far as we can."

The Motion was put and negatived.

[*Mr. Buckland; Babu Surendranath Banerjee.*]

The Hon'ble MR. BUCKLAND said:—"With Your Honour's permission I will ask the Council to accept an amendment of which I have not been able to give notice. I am indebted to my friend the Hon'ble Member, the Collector of Calcutta, for a suggestion which may be of very considerable importance in the working of the Bill. It is a little section which is taken from section 87 of the Land Registration Act. It will empower the Collector, in cases where he is overwhelmed with appeals under this Act, to appoint an officer who will exercise what is called special appellate powers. Particularly at first there may be a large number of petty appeals, and it may be very undesirable that the time of hard-worked Collectors should be taken up with such cases. He may have an experienced Joint-Magistrate or Deputy Magistrate who could dispose of such appeals under general instructions from the Collector. For these reasons, I move that the following section be inserted after section 34:—

'The Local Government may from time to time vest any officer other than the Collector of the district with special appellate powers under this Act; and every Officer so vested shall be competent to hear and decide any appeal which the Collector of the district is competent to hear and decide under this Act.'

The Motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in clause (*2*) of section 35, "section 190" be substituted for "section 192."

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND moved that the Bill, as settled in Council, be passed. He said:—

"I do not propose to detain the Council at any length. I think we may consider ourselves fortunate that we have got through this debate in four hours. I hope that the Bill will now receive the sanction of the Government of India, and that the Act will be launched under Your Honour's auspices, assume shape and be brought into working order. It is impossible to predict with any certainty what will be the result of the working of this Act, but what we claim to have done is that we have made this effort to redeem the pledge given by the Government that an Act will be passed for the maintenance of a Record of Rights; and we have proceeded on the lines which Your Honour intimated in a

general way, so long ago as June, 1892, should be followed, namely, that the measure should take the shape of an amplification of Registration Offices. It now remains for the people to co-operate with us, and to come forward and register their transfers, and to accumulate for themselves a body of evidence of their transfers and successions that shall stand them in good stead in the day of litigation. We hope that this measure, which will be ancillary of course to the more important measure of the Tenancy Act, and particularly Chapter X of that Act, will conduce to the peace and order of any district or part of a district to which it is applied, and that it will enhance the value of landed property and conduce to the peace and prosperity of the peasantry of Bihar and other parts of the country to which it may be applied. I have again to thank my hon'ble colleagues in the Select Committee; I have also to thank the several Public Associations which have sent us valuable reports upon the subject of this Bill, and I have to thank the Council as a whole for the patient hearing which they have accorded me."

The Hon'ble MAULVI MUHAMMAD YUSUF, KHAN BAHADUR, said:—"I will not, at this late hour, detain the Council with any lengthy observations regarding the merits of the Bill as it now stands. I may, however, be allowed to say in connection with the Bill that the attitude of the President towards the non-official members of the Council has been happily one of encouragement and conciliation; and perfect freedom of thought and full liberty of speech have always been conceded to us, although some portions of the debate were well calculated to put patience and temper to severe test. For this we are sincerely thankful to the Government. All questions that have come up for debate and decision have been decided after due deliberation and full and free discussion on their own merits, according to the true convictions and opinions of the Members, and the Government has never had recourse to official majority in connection with any question relating to the Bill. This is highly encouraging, and leaves nothing to be desired. Although I would have been glad if many more of the suggestions and amendments which we proposed had been accepted and carried out, still I cannot shut my eyes to the fact that Government has conceded a great deal, and has never refused to adopt such of our suggestions as were deemed by it reasonable and fit to be accepted. The Bill has been conceived and prepared with the honest belief that it would promote the good of the people. Altogether the Bill as it now stands assumes a shape so that it

[*Maulvi Muhammad Yusuf; Mr. Risley; the President.*]

is least open to adverse and hostile criticism: the most objectionable parts have been purged away, and it is impossible to expect that it should assume a more satisfactory appearance. Under these circumstances, I vote that the Bill should be passed into law."

The Motion was put and agreed to.

THE CALCUTTA PORT ACT, 1890, AMENDMENT BILL.

The Hon'ble MR. RISLEY presented the report of the Select Committee on the Bill to further amend the Calcutta Port Act, 1890.

The Hon'ble MR. RISLEY also applied to the President to suspend the Rules of Business.

The Hon'ble THE PRESIDENT having declared the Rules suspended—

The Hon'ble MR. RISLEY moved that the report of the Select Committee be taken into consideration in order to the settlement of the clauses of the Bill. He said:—

"In dealing with this Bill I am fortunate in having very little to say. The only section in which any substantial alteration has been made by the Select Committee is section 15, which, as it originally stood, empowered the Port Commissioners to declare any of their warehouses to be bonded warehouses. It was suggested in Select Committee that, as the Sea Customs Act of 1878 already conferred the power of converting private licensed warehouses into bonded warehouses, the amendment proposed by the Bill, as it was introduced, would have the effect of creating what may be described as a double procedure for doing practically the same thing, and for that reason it was considered better to proceed upon existing lines for converting the warehouses of the Port Commissioners into bonded warehouses within the meaning of the Sea Customs Act, instead of proceeding by independent legislation to empower the Port Commissioners to do what is required. Having regard to the important interests at stake and the somewhat intricate legal questions involved, the Port Commissioners felt that this was a point which required to be determined with the greatest care, and accordingly, with the concurrence of the Select Committee, the sections as re-drafted by them were referred to the Hon'ble the Advocate-General, and a slight modification was introduced by him. The form the

sections now take is that of empowering warehouses belonging to the Port Commissioners to be licensed under section 16 of the Sea Customs Act; they would then become bonded warehouses, the provisions of that Act would apply to them, and the Chief Customs authority would have full executive powers in the matter. When the question was referred to the Hon'ble the Advocate-General, he held that in order to do that it would be necessary to declare *all* the warehouses of the Port Commissioners to be private warehouses within the meaning of the Sea Customs Act, and capable of being licensed as bonded warehouses. He also advised that, as the Bill in the form in which it was amended would have the effect, I can hardly say of altering, but at any rate of touching, the Sea Customs Act, it would be necessary to obtain the previous sanction of the Governor General in Council; this has, therefore, been done, and the necessary sanction has been received. This is really the only substantial alteration which has been made by the Select Committee, the other alterations being merely formal and subsidiary to this one. I have omitted to explain that the section dealing with warrants has been modified to some extent. As it at first stood it was necessary, as we were dealing with an independent enactment, to state the section to which warrants should conform, and to give a statutory form of warrant; but now, having brought all these arrangements within the purview of the Sea Customs Act, we say:—'The warrants delivered under section 96 of the Sea Customs Act shall in the case of the said warehouses be signed by the Commissioners or some person duly authorized by them'."

The Motion was put and agreed to.

The Hon'ble MR. RISLEY also moved that the clauses of the Bill be considered in the form recommended by the Select Committee.

The Motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in section 4 of the Bill, the words "passengers or" be omitted. He said:—

"Before making any remarks upon this section, I wish it to be understood that I have no desire to stand in the way of the passing of this Bill, which I understand has been introduced at the instance of the Mercantile Community which is so worthily represented in this Council by my hon'ble friend to my

left (Mr. Smyth). I think it is no part of the duty of a Port Trust to make arrangements for the conveyance of passengers. They deal with goods which arrive at, and are exported from, this Port. But apart from this question of principle, I have to observe that if the Bill is to be passed in the form and shape in which it has been laid before us, it will seriously interfere with the operations of the Calcutta Tramways Company, and will entail heavy loss to the Corporation of Calcutta. The Council will remember that last year the Corporation entered into a contract with the Tramways Company which was legalised by this Council. Under the terms of that contract the Company pay a mileage rate to the extent of several thousands of rupees per annum to the Corporation, and they further keep in order the portions of the roads over which the tramway lines are laid. If this section is passed into law, and if the Port Commissioners take advantage of this provision and run tramcars for passengers from Chitpore to Kidderpore, the Tramways Company will have to cease running their cars along that part of their line, which will not only mean loss to the Corporation, but serious inconvenience to the public.

"In this connection may I be permitted to inquire of the Hon'ble Member in charge of the Bill as to what has become of the little project of law proposed by the Calcutta Corporation to enable them to recover rates upon huts situated on lands belonging to the Port Commissioners? I am told that the Corporation lose about Rs. 20,000 a year for want of such a necessary provision in the law. It is a very urgent matter, and I appeal to the Hon'ble Member to expedite the settlement of the question, which the longer it is delayed the heavier is the loss which the Corporation of Calcutta have to sustain."

The Hon'ble MR. RISLEY said:—"I think it will be convenient if I deal first with the matter which the Hon'ble Member has mentioned last, namely, the question of the assessment of buildings within the Port Commissioners' lands for the purposes of the Calcutta Corporation. I understand that there is a special arrangement for assessing the property of the Port Commissioners by a percentage on the money which was spent on the property, but that does not provide for the assessment in the ordinary way of buildings belonging to persons other than the Port Commissioners, but which stand on their property. There is no question whatever as to the justice of the claim which the Corporation has put forward. It has been submitted to this Government and considered,

and a proposal to deal with it by an amendment of the Calcutta Port Act has been submitted to the Government of India. But I must explain that the proposal to deal with the Calcutta Port Act in the way in which it is dealt with in the Bill before the Council dates some time back. The question to which my hon'ble friend refers came in subsequently, and the original proposal having already been reported to the Secretary of State, it was held that a further report would be necessary in order to the introduction of the proposed amendment. In other words, it will not be open to us, under the rules relating to the previous sanction of the Government of India, to bring that question into the Bill now before the Council. It has been reported in the regular course of business, and I believe there is very little question as to the necessary sanction being received, and as soon as sanction is received, the matter will be dealt with in the ordinary way.

"As regards the motion to omit the words 'passengers or' in section 4 of the Bill, which amends section 35, sub-section (*2*), of the Port Act, I must express my extreme regret in adding one more to the series of instances in which the Hon'ble Member's proposals have been declined during to-day's debate. I see no way of getting over the matter, except that of leaving the thing as it stands; there does not appear to be any means of compromise in the matter. At the same time I think the apprehension which the Hon'ble Member has expressed, that the Port Commissioners' line will compete with the existing Chitpur Tramway line, in which the Municipal Commissioners are interested, is altogether groundless. What the Mercantile Community wish the Port Commissioners to do—though the Port Commissioners are not specially anxious to do it—is that they should carry passengers merely between the jetties and the docks. Obviously when a merchant's clerk or other employé has to go to the docks to look after consignments of merchandise, it is extremely inconvenient that he should not be able to make use of the Port Commissioners' tramway for the purpose, but I apprehend there is no question whatever of the Port Commissioners carrying general passengers and taking customers away from the Calcutta Tramway. In the first place, the provision in the Bill which will authorise the carrying of passengers will not be made use of on the whole of the line connecting Chitpur and Kidderpore, but only on the portion between the jetties and the docks. The Port Commissioners' so-called tramway, which is really a railway, used hitherto solely for carrying goods, runs inside the Port Commissioners' premises, and

would, I imagine, offer no attractions to the ordinary passenger. There will, I understand, be no published time-table and no regular passenger trains. The passengers carried will consist of the special class of clerks, sarcars, stevedores, ships' coolies, and others having business at the docks, and I do not think that such small traffic can possibly interfere with the interests of the Calcutta Tramways Company. I may further state that if the Municipal Commissioners will be satisfied with an executive pledge to the effect that the permission to carry passengers will not be used so as to draw business away from the Calcutta Tramway, the Port Commissioners are willing to give such a pledge. Hereafter, when further occasion arises for revising the Port Act in connection with the question of assessment, which has been mentioned, the status of the Port Commissioners' Railway will doubtless come under discussion, and full expression will be given to the views of all the parties concerned—the Mercantile Community, the Municipal Commissioners, and the Port Commissioners."

The Hon'ble MR. GHOSE said:—"I beg to congratulate the Hon'ble Member on the very satisfactory statement which he has made, and I think my hon'ble friend the Mover of the amendment must be perfectly satisfied with that statement, namely, that steps have been already taken in order to give effect to the proper and just claims of the Corporation, which my hon'ble friend represents here, regarding the assessment of certain property within the Port Commissioners' premises. With regard to the other matter which forms the subject of his amendment regarding the carrying of passengers by the Port Commissioners, it seems to me that after the explanation which has been given, that they will have no fixed time table, and will carry only certain clerks and sarcars and other people connected with the merchandise of the town; that they will have in fact no regular passenger service, I think my hon'ble friend should also be satisfied and should withdraw his amendment.

"Before resuming my seat I desire to take this opportunity, as this will probably be the last occasion on which I shall have the honour of addressing the Council, of expressing my sense of grateful appreciation of the patient and indulgent hearing which has always been accorded to me, and the kindness and courtesy which I have invariably experienced at the hands of every Hon'ble Member of the Council. And I trust, Sir, that although we have frequently found ourselves in opposition to the views of the majority of Hon'ble Members,

[*Mr. Ghose; Babu Surendranath Banerjee; Mr. Risley; Mr. Lyall.*]

we have never lost sight of the spirit of compromise which ought to animate our debates, and that we have never been wanting in due and proper respect for the opinions of those from whom we have for the time being been compelled to dissent."

The Hon'ble Babu Surendranath Banerjee in reply said:—"After the explanation which has been given by the Hon'ble Member in charge of the Bill, and the assurance given by him that it is not in contemplation to use the Port Commissioners' Railway for the purposes of passenger traffic, but only for the convenience of those who are connected with the mercantile business of this Port, I beg leave to withdraw my amendment."

The Motion was, by leave, withdrawn.

The Hon'ble Mr. Risley moved that the Bill, as settled in Council, be passed.

The Motion was put and agreed to.

THE BENGAL SANITARY DRAINAGE BILL.

The Hon'ble Mr. Lyall moved that the Bill to facilitate the construction of drainage works for improving the sanitary condition of local areas be referred back to the Select Committee. He said:—

"At this late stage I do not propose to trouble the Council with more than a very few words. The Council will remember that at the end of February last the Select Committee who sat on this Bill presented a report, and that in the last paragraph of their report they recommended that the Bill, as amended by them, should be republished. In accordance with that recommendation the Bill has been republished; and in doing so the Government issued a Circular to all local authorities drawing their attention to the provisions of the amended Bill, and calling for an expression of their opinion. In accordance with that Circular a great number of replies have been received, some of which are very much to the point, and criticise the Bill on points which I think require more consideration than can be given at a sitting of the full Council. There are two points in particular on which new light has been thrown. These are first, the question of dealing with projects falling partly within the limits of one or more municipality. The other point is the manner in which the cost of the

work carried out under the Act should be realised. These two points in themselves are sufficiently important to justify my placing on the agenda the motion standing in my name."

The Motion was put and agreed to.

The Hon'ble MR. LYALL also moved that the Hon'ble Mr. Risley be appointed to the Select Committee in the place of the Hon'ble Mr. Collier.

The Motion was put and agreed to.

ADJOURNMENT OF THE COUNCIL.

The HON'BLE THE PRESIDENT said:—"This brings us to the end of the Cold-weather Session of 1894-95, and when we meet in July and August next, the first business of the Council will be to receive from the Select Committee the report on the Drainage Bill; and I trust that after such amendments as may seem necessary to be made, the Bill will be passed into law. There is a possibility of there being another Bill laid before the Council, namely, a Bill to amend the Partition Law, which has been in preparation for some time and has been sent to the Government of India, and if it be received back in time, it may perhaps be passed in the Summer Session, otherwise it will have to be delayed. I do not think there is any other legal work of importance with which I shall have to trouble the Council.

"I cannot close this Session without saying one word, with reference to what fell from the Hon'ble Mr. Ghose, to express how heartily I appreciate the spirit in which he and his *confrères* have joined our meetings, and how cordially I agree with what he has said, that the spirit of compromise and the endeavour to assist the Government by careful, honest and zealous consideration of the measures laid before them, has been the leading note of the Members of this Council. I am quite satisfied in my own mind that the extension of the Council has materially added to its strength, to its popularity, and to its power of doing good for the country. Of the Hon'ble Members present there are, I think, three whose term of office will come to an end before we meet next time, and who may be re-elected or who may not. If they are re-elected, we shall welcome them back; if not, we hope we shall find in their successors colleagues who are as generous and as zealous as they have been."

The Council adjourned *sine die*.

H. L. BELL,
Offg. Assistant Secretary to the Govt. of Bengal,
Legislative Department.

CALCUTTA;
The 6th May, 1895.

Reg. No. 136G—300—23-5-95.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 *and* 1892.

The Council met at the Council Chamber on Saturday, the 6th July, 1895.

Present:

The Hon'ble Sir Charles Alfred Elliott, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.
The Hon'ble H. J. S. Cotton, C.S.I.
The Hon'ble D. R. Lyall, C.S.I.
The Hon'ble J. A. Bourdillon.
The Hon'ble C. E. Buckland, C.I.E.
The Hon'ble H. H. Risley, C.I.E.
The Hon'ble R. C. Dutt, C.I.E.
The Hon'ble Rai Durga Gati Banerjea Bahadur, C.I.E.
The Hon'ble Surendranath Banerjee.
The Hon'ble J. G. Womack.
The Hon'ble Maharaja Jagadindra Nath Roy of Nator.
The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.
The Hon'ble C. E. Smyth.

STATEMENT OF THE COURSE OF LEGISLATION.

The Hon'ble the President said:—"Before beginning the work of the Council, I wish briefly to state that the work of the Session which is now commencing is summed up in the List of Business which lies before Hon'ble Members. We have to introduce and to pass three small Bills, all of which will be brought forward to-day for the first time, and we have to carry through the Sanitary Drainage Bill, which is now in the hands of the Select Committee. I am in hopes that the Select Committee will be able to present their Report upon this Bill on Saturday next, and in that case I propose that we shall commence the discussion of it on this day fortnight, and then proceed to discuss it regularly as long as is necessary, till the Bill is passed. In that way I think it is probable that in the course of two, or at the outside of three, sittings, beginning from

this day fortnight, the 20th instant, we shall be able to get through our legislative programme, and I shall then be able to release Hon'ble Members from further attendance in Council. Practically speaking this day fortnight will be the first day on which there will be anything but formal business before the Council, and I hope that by that time the Council will be completely re-organised, and that we shall then have present all the members who have already been elected, and who are now being re-elected, and I hope then to have the opportunity of welcoming them to the Council."

RAIN GAMBLING.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Has the attention of Government been called to the articles which have appeared in the newspapers, particularly in the *Bharat Mittra*, drawing attention to the nuisance of rain gambling at Barabazar? What action, if any, does the Government intend to take in the matter? Is the Government aware that the gambling is carried on openly in a place which is thronged with people from morning till evening and is not far off from the police-station, and that it is regarded as a serious nuisance by the respectable section of the community at Barabazar? Is the Government aware that rain gambling has been suppressed in the town of Bombay and in all the Native States?

The Hon'ble MR. COTTON replied—

"The Lieutenant-Governor has had the subject referred to under his careful consideration; he is advised that this form of gambling cannot be interfered with except by legislation, and he has decided that it is not desirable to attempt to legislate with the object of stopping it. His reasons are, firstly, that it is practically impossible to put down betting in private houses: if the particular form it has taken in the case under reference were stopped, it would break out in some other form, and if driven into secrecy, it might be even more harmful than if practised openly. Secondly, he does not think it possible to devise a law which would stop the form of betting known as rain gambling without also bringing such practices as betting on races, or on other events of chance, within the same prohibition; he does not think the public conscience would support this; and he is opposed to any legislation, the tendency of which would be to punish acts committed by one class, while similar acts committed by another class are not interfered with."

[*Babu Surendranath Banerjee.*]

ALLEGED DACOITY AT FARIDPUR.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

(*a*) Has the attention of Government been called to a charge of dacoity brought by one Tarak Chandra Bose in the Faridpur district against Aijuddi and others reported in the newspapers in April last? Is it true that the Deputy Magistrate who in the first instance enquired into the case remarked that there was scarcely a shadow of doubt that some of the accused entered the boat of the complainant and took its contents, and that in submitting the case for the orders of the Magistrate, recommended that the accused should be summoned—two under section 411, Indian Penal Code, and one under section 380, Indian Penal Code? Is it the case that the Magistrate, who never examined a single witness, but relied solely on the papers in the case, not only did not summon the accused, as recommended by the investigating officer, but directed that the complainant be prosecuted under section 211, Indian Penal Code, for bringing a false charge against the accused; that thereupon the complainant moved the High Court, who reversed the order of the District Magistrate, directing him to make a further enquiry and send up the accused to the Sessions, if there was a *primâ facie* case; the High Court expressing their surprise that the Magistrate should direct the prosecution of the petitioner under section 211, Indian Penal Code, simply because there was not sufficient evidence in support of his complaint; that eventually the accused in the case were committed to the Sessions by the Deputy Magistrate, but that the Magistrate directed the Public Prosecutor to withdraw the case and the case was accordingly withdrawn, notwithstanding that the complainant himself undertook by a special application to conduct the prosecution at his own expense and on his responsibility?

Having regard to the law which leaves no remedy open to the complainant, will the Government direct the Public Prosecutor under section 417, Criminal Procedure Code, to present an appeal to the High Court against the order passed by the Sessions Judge, or pass any other orders which the justice of the case may demand?

(*b*) Is it true as stated in the petition of Tarak Chunder Bose in the case referred to in the preceding question, that the Inspector-General of Police found fault with the police in the Faridpur district for their want of success in dealing with dacoity cases, and that several cases of dacoity reported by the

police to be false have resulted in the conviction of the persons accused, which convictions were upheld by the High Court?

The Hon'ble MR. COTTON replied—

"The attention of Government was called to the case in question, and a report was called for from the Magistrate through the Commissioner, which has lately been received. It appears that the facts are on the whole as stated in the Hon'ble Member's question. The complaint was rejected by the police as false; but on the plaintiff filing a petition, a preliminary enquiry was ordered, which was conducted by a Deputy Magistrate, who reported that though the charge of dacoity was false, the plaintiff had been robbed. The Magistrate read this report and held that the evidence recorded did not bear out the conclusion, and that the whole story was incredible, and he ordered the plaintiff to be prosecuted under section 211 for a false complaint. The High Court on appeal reversed this order, and directed that the Deputy Magistrate who held the enquiry should go on with it, and determine judicially whether process should issue against the persons accused, or else consider whether it is a fit case in which to direct a prosecution for false complaint. On receipt of these orders, as the first Deputy Magistrate had only second class powers, the case was made over for trial to another and full-powered Deputy Magistrate, who eventually held the charge to be proved, and committed the accused to the Sessions. The Magistrate on again reading the evidence was convinced that the charge could not be sustained, and consulted the Sessions Judge, who, after perusing the records, told the Magistrate that he saw nothing in it to justify conviction, and that it would be a waste of time to try the case. On this the Magistrate instructed the Government Pleader to ask leave to withdraw from the prosecution under section 494, Criminal Procedure Code, and the Sessions Judge passed the following order:—

'I have perused the voluminous depositions taken before both Deputy Magistrates, and consider that no conviction for dacoity is likely to be had on such evidence as that. Certainly that this Aijuddi now accused cannot be convicted. I accordingly allow the withdrawal. Aijuddi is acquitted, &c.'

"Under those circumstances it would be out of place for the Government to file an appeal against the acquittal.

"It may be convenient that I should add here that the further assertion which has been made in some newspapers, and which was repeated in a question

lately put in Parliament, that the accused were eventually convicted and the conviction upheld by the High Court, is without foundation.

"With regard to the last part of the Hon'ble Member's question, the petition of Tarak Chunder Bose, to which he refers, has not been seen by Government, but I have made enquiries from the office of the Inspector-General of Police, and have ascertained that the District Superintendent of Police of Faridpur was warned to show greater personal activity in the investigation of dacoity cases, but that it is not the fact that any cases of dacoity during 1894 and 1895 reported by the Faridpur police to be false have resulted in the conviction of the accused in the Sessions Court."

ALLEGED MURDER AT CHITTAGONG.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Whether the attention of Government has been called to the facts of a case recently published in the *Amrita Bazar Patrika* of the 14th June last, in which one Kanti Chandra Ghose was charged with murder by the District Superintendent of Police at Chittagong? Is it true, as stated in the *Patrika*, that Kanti Chandra Ghose was arrested on a charge of murdering his servant upon an anonymous application in which his name was not even mentioned, but that one Kanti Chandra Roy was charged by the writer of the anonymous petition with the said murder; and as there was no Kanti Chandra Roy in Chittagong, Kanti Chandra Ghose was arrested, that he was kept in *hajat* for nearly a month, notwithstanding the fact that respectable witnesses, such as a local Munsif and others, deposed that the accused Kanti Chandra Ghose had one servant, and that he was living, and that subsequently the man who was supposed to be murdered was found living in the Backergunge district? Does the Government approve of the proceedings? If not, will the Government pass such orders as the justice of the case may demand?

The Hon'ble MR. COTTON replied:—

"The attention of Government was drawn to the articles in the newspaper referred to, and a report on the facts of the case has been called for from the Commissioner of Chittagong. The report has been received to-day; as soon as it has been considered by the Government, an answer will be given to the Hon'ble Member's question."

[*Mr. Buckland.*]

THE BHUTAN DUARS REPEALING BILL.

The Hon'ble MR. BUCKLAND moved for leave to introduce a Bill to provide for the repeal of Act XVI of 1869 (the Bhutan Duars Act). He said:—

This is an Act of special interest only to the Bhutan Duars, and it is not likely that the Council can have much acquaintance with it. I should therefore, perhaps, say a few words with regard to the circumstances under which this Act became law, before asking the Council to repeal it. It will not be necessary to go over the history of the campaign against Bhutan, which took place in 1864-65 in consequence of the treatment that Sir Ashley Eden's mission met with at the hands of the Bhutias. It is sufficient to mention that during the year 1865 the British arms were crowned with victory, and that a treaty of peace was made on the 11th of November of that year with the Bhutan Government, and that, following the threats which had been conveyed to the Bhutan Government of the consequences of their non-performance of the conditions offered to them, it was considered necessary by the Government of the day, by a proclamation, dated the 4th July 1866, to annex to British territory the eighteen *duars*, which are now known by the collective name of the Western Duars: *duars* meaning the gates or passes from British territory into what was then the territory of the Government of Bhutan.

"I have consulted the records of those days, and find it there stated that the Bhutias had left no records, and that they appear to have had nothing which might be called a system of Revenue Administration. When the country was taken over by the British Government, and the district of Jalpaiguri was formed, the Government of the day introduced certain laws and regulations into the territory thus acquired. Amongst them it appears that the Code of Civil Procedure was extended to that territory, and thereupon the cognizance of all suits of a civil nature became vested in the ordinary civil courts having jurisdiction within the annexed tract of country. Within a very short time a case occurred in which the local civil officer did justice between landlord and tenant. But the case came on appeal to the High Court, and the High Court in their decision intimated that they were satisfied that justice had been done by the local officer, but that in conformity with law they were bound to overrule him. When this matter came before the Government of India, it was thought desirable to legislate with a view

to have substantial justice done in the newly acquired territory, rather than strict law administered, and administered unwillingly, as I have stated, by the High Court of the day. A Bill, therefore, which became Act XVI of 1869, was introduced in the Council of the Governor-General in May 1869, by Mr. Frank Cockerell of the Bengal Civil Service; and it might be well that I should read a few lines of the speech the Hon'ble Member made in introducing the Bill, which will, I think, show the Council in a nutshell the objects and reasons of that measure. The Hon'ble Member said:—

'Experience had shown that, in a newly acquired territory, where British Administration had been preceded generally by bad Government, and often, as in the case of Bhutan, by a complete absence of any regularly constituted Government, claims relating to interests in land, or in any way connected therewith, were not satisfactorily dealt with by the ordinary Civil Courts, governed and restricted as those Courts were by the rules of Civil Procedure in their adjudication of all suits and matters coming before them.

'For claims of this kind, whether with regard to the equitable interests of the persons concerned, or the interest of the State which, until the land revenue assessment of the newly-acquired territory was completed, might be said to be interwoven with those of claimants of any right or title in the land, needed to be determined by considerations of expediency and good policy, such as the Civil Courts in the exercise of their ordinary jurisdiction were precluded from entertaining. Hence, in the case of such previous acquisitions of territory as the Panjab and Oudh, the operation of the Code of Civil Procedure was barred as regards claims to any interest in land pending the completion of the land revenue settlement of those provinces, and all claims of the nature referred to were adjudicated in the Court of the Settlement Officer.

'Why this course was not adopted as regards the territory ceded by Bhutan at the time of its annexation, did not appear, but a case had recently occurred which showed conclusively that this measure ought to have been taken when the Code of Civil Procedure was introduced into the annexed province, and should certainly be no longer postponed.'

"Then the Hon'ble Member in charge of the Bill which became Act XVI of 1869 referred to the High Court judgment to which I have briefly alluded. The Bill was then referred to a Select Committee, and the rules which were sent up by the Bengal Government were considered. The rules which were attached to the Act (and which have since performed that function) were meant to provide for cases regarding immoveable property in that territory.

"When the Bill was passed in July, 1869, in the Viceroy's Council, the Hon'ble Member in charge of it dwelt chiefly on the point that the Bill was a temporary measure only intended to provide for a transitional state of things, and the question then was how the Bill should be terminated. The question at issue

at that time was whether the Act should be terminated by a published order of the Governor General in Council, or whether it should be left to future legislation to repeal it, and it was decided at that time to take the latter course. It is, therefore, necessary to introduce a Bill to repeal the Act which, as was settled at the time, cannot be repealed or altered merely by an order of the Government.

"Since the passing of Act XVI of 1869 the Jalpaiguri district, which includes the Western, *i.e.*, the Bhutans Duars, has become one of importance in consequence of a considerable increase in the population. The census of 1872 showed a population of 100,111, but the census of 1891 showed just a few less than 300,000 inhabitants. Moreover, the district has grown enormously in importance by reason of the vast amount of British capital which has been introduced into it, a number of tea-gardens have sprung up, and there has been a great extension of European industry and enterprise in that territory. It has therefore appeared to the Government for some time past that the Act, which was introduced avowedly for a temporary purpose in dealing with the newly acquired territory of the eighteen Bhutan Duars, is not adapted to the present state of affairs. It must not be supposed that there is no law in force in the Western Duars portion of the Jalpaiguri district. In 1874 an Act was passed, called the Scheduled Districts Act, by which the Local Government is empowered, with the sanction of the Governor General in Council, to extend to the territories mentioned in that Act, or to any part of them, any Acts which are in force in British India. I have been through the Bengal Code, and I find that at this moment there are in force in the Duars more than thirty different Acts, and among them several very important Acts, such as the Penal Code, the Code of Criminal Procedure, the Code of Civil Procedure to a limited extent, the Police Act, the Transfer of Property Act, and the Contract Act, and it is quite possible, under the Scheduled Districts Act, to which I have referred, to extend to the Duars, with the sanction of the Governor General, any Act which the Government may please. But it is not possible to extend to it the whole of the Code of Civil Procedure as long as Act XVI of 1869 remains on the Statute Book.

"These are the reasons why it is thought necessary to introduce this little Bill. Before anything can be done to empower the ordinary Civil Courts of the country to take up cases connected with immoveable property, it is necessary to repeal Act XVI of 1869. The question has assumed some importance within the last few years, not only on account of the development of English industry, but also because the tea planters have been memorialising the Government

for some time with a view to the conversion of this district into what they call a Regulation district. It is obviously impossible to grant that application *in toto*; the district will remain under the Scheduled Districts Act, and it will be a question as to which Acts should be applied in regard to cases concerning immoveable property when Act XVI of 1869 is repealed. This matter will, perhaps, be discussed in Select Committee, but I should inform the Council that the decision lies entirely with the Local Government, who can, with the sanction of the Government of India, introduce such laws as they may think fit when Act XVI of 1869 has been repealed and the ground has been thereby cleared.

"It may be asked why this repeal was not carried out before. Looking at the Statement of Objects and Reasons, I am reminded that for some years past very important settlement operations have been carried out in this tract of country, and it was thought desirable, as long as the settlement was in progress, to defer the repeal of this Act. A Deputy Magistrate and Collector, Mr. Donald Sunder, has as Settlement Officer recently completed this settlement, and has done it very well, and his final report is now before the Government. The Lieutenant-Governor took the opportunity, when the settlement proceedings were drawing to a conclusion, to lay the matter before the Government of India, and their sanction has been obtained to proceed with legislation to repeal Act XVI of 1869. With these observations I move for leave to introduce this Bill."

The Motion was put and agreed to.

The Hon'ble MR. BUCKLAND also applied to the President to suspend the Rules of Business to enable him to introduce the Bill, and to move that it be read in Council.

The Hon'ble THE PRESIDENT having declared the Rules suspended—

The Hon'ble MR. BUCKLAND introduced the Bill and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble MR. BUCKLAND also moved that the Bill be referred to a Select Committee, consisting of the Hon'ble Messrs. Lyall, Beighton and Smyth, and the Mover.

The Motion was put and agreed to.

THE CALCUTTA ELECTRIC LIGHTING BILL.

The Hon'ble MR. COTTON moved for leave to introduce a Bill to facilitate and regulate the supply of electricity for lighting and other purposes in Calcutta. He said:—

"As it is proposed to advance this Bill more than one stage to-day, it will be more convenient, with Your Honour's permission, that I should make such remarks as I propose to address to the Council when I move that the Bill be read in Council.

The Motion was put and agreed to.

The Hon'ble MR. COTTON said:—"The observations which I shall address to the Council with reference to the Bill which has been circulated, will relate, first, to the necessity for legislation on the subject of the supply of electricity; and in the second place to an explanation of the particulars in which the Bill which will be introduced to-day differs from the English Statute Law on the subject. Hon'ble Members are no doubt aware that it is open to any of Her Majesty's subjects to generato and supply electricity for his own purposes—either to use it himself, or to supply it to other places and persons—provided that no injury to the property, convenience, or comfort of any other persons, or to the public, be thereby committed, and provided also that it be not necessary for that purpose to break up the public streets or interfere with any public rights. As far as the supply of electricity is limited to this, no Act of the legislature is necessary. So we have seen that in the town of Calcutta various private installations have been established. There is the installation for the electric lighting of Harrison Road, which is managed by the municipality; electric light is supplied by private installation to the Hooghly Bridge, to the Docks at Kidderpore, to the Bengal United Service Club in Chowringhee, to the Eden Gardens under the control of the Public Works Department, and we have seen temporary installations in the *maidan* for illuminating the skating rink, and in Government House, both on the occasion of the recent investiture and on previous occasions. These are to all intents and purposes private installations which have been carried out without trespassing on public rights, and no legislation has been required to validate them, and if the demand for electricity in the town of Calcutta were limited to isolated cases of this kind, no legislation from the Government would be required.

[*Mr. Cotton.*]

"The reason for legislation is this: The Government are of opinion, and the authorities whom we have consulted on the subject, viz., the Chamber of Commerce, the Trades' Association, the Calcutta Corporation, and the Commissioners for the Port of Calcutta; these authorities as well as the Government are of opinion that the time has come when the demand for electricity will increase, and that it cannot be adequately supplied, except by the establishment of one or more generating stations which would be in a position to meet the demand. As soon as a scientific agency has acquired commercial value and becomes a means of profit, there arises a class of potential consumers who want to be supplied, and a class of traders who desire to supply such consumers. Hence the public pressure which has been put on the Government to facilitate the introduction of electric lighting; but as consumers cannot be accommodated without producers interfering with public and local rights, and in particular without their breaking up the streets to the great inconvenience of the public, it becomes necessary for Government, through its Legislative Council, to regulate the supply. This is done by providing that those who undertake to supply electricity, and cannot do so without overriding public and local rights, shall be enabled to do so by legislation passed for the purpose, subject in the interests of the public to legislative restrictions.

"This briefly is the reason of the necessity for legislation in Calcutta, and it is identical with the reason for legislation in Great Britain and in other countries where electricity is now supplied by companies. The history of the English law on the subject is simple. In 1879, an important committee of the House of Commons was convened, under the presidency of Sir Lyon Playfair, to consider whether legislation was necessary to regulate the supply of electricity. It was the opinion of that Committee that the time had not come for legislation, and although it was foreseen that the time would come quickly, the proposal to legislate was then allowed to drop. The ink with which that report was written was hardly dry before very important discoveries in electricity were made, and in particular the discovery of incandescent light, which enabled electric lighting to be distributed more easily; and as soon as that discovery was made, pressure was again put upon Parliament to legislate for the regulation of the supply of electricity, and then the law of 1882 was passed. That law was substantially still in force, and is the statutory provision upon which the Bill before the Council is based. By that law authority is conferred for the Regulation of the supply of electricity in three ways: first, by a special Act; secondly,

by what is known as a provisional order; and thirdly, by license. The meaning of a special Act is of course clear. A special Act is passed in order to enable a particular company to supply electricity subject to such restrictions as that Act may contain. This is a procedure which the Board of Trade have discouraged, and as a matter of fact very few special Acts of this character have been passed. The second procedure, which is described as the grant of a provisional order, is somewhat similar to that of a special Act. Power is delegated to the Board of Trade to prescribe the whole of the procedure under which the undertaking company is authorized to supply electricity, and the details regarding the restrictions to be imposed upon them. A provisional order is an elaborate set of rules which guide and control the company. It has no effect whatever until it is confirmed by a special Act of Parliament. A special private Act is introduced confirming the order of the Board of Trade, and then the order of the Board of Trade has the force of law. The third method is that of a license, which contains details similar to those of a provisional order, but differs from it in some material respects. The Board of Trade, in whose hands the entire administration of this department rests, have always discouraged licenses and have encouraged promoters to apply for provisional orders, and very few licenses have therefore been granted under the Act. Nearly all the companies in England have been enabled to undertake their work by means of provisional orders. I will explain briefly the salient distinctions between a license and a provisional order. A provisional order is without limit of time. A company is granted its rights indefinitely, but there is a clause in the Act of 1882 which empowers the local authority over the area to which the order extends to purchase the undertaking on the expiration of twenty-one years. This period having been objected to by the public, an Act was passed six years afterwards, in 1888, extending the period from twenty-one years to forty-two years, and all provisional orders issued in England now are subject to the right of the local authority, that is to say, the Corporation or County Council, or London County Council, to purchase the undertaking at the expiration of forty-two years. A license is granted for a fixed period of seven years subject to renewal. The advantage of a license over a provisional order consists in the fact that it is not liable to be bought up by the local authority, and also in the fact that a license can be obtained quickly and promptly without the delay of going to Parliament to confirm it, or the risk which every reference to Parliament involves. No further objection is raised. The Board of Trade have the power in their own hands.

[*Mr. Cotton.*]

"The question came before this Government as to the procedure which should be adopted in India, and it was decided that the form of a provisional order is unsuited to the condition of things prevailing here. There is no Board of Trade under the Government to whom the responsibility of drafting the provisional order can be referred. In Calcutta the Government itself has to exercise the authority which in England is exercised by the Board of Trade. So it was determined that the form of a license would be more appropriate to the condition of things here.

"Then the question of the term of the license came under consideration, and also whether a concession granted under a license should be purchaseable by the local authority or not. In respect of the latter question it was decided that the local authority should have no right to purchase at any time, thereby acting on the same lines as have been adopted in England in regard to licenses. In Calcutta the Municipal Corporation will have no power to purchase any concession granted under this Act.

"The question of the duration of a license involved a further difficulty. It was originally proposed that the duration of a license should be seven years, the same period as the English Act prescribed. I should have said that the Act of 1882, as it was originally introduced into Parliament, prescribed the period of three years; it was extended to five years by the Select Committee of the House of Commons, and the House of Lords raised it to seven years. The legislation of 1888 did not affect the duration of licenses. This point was, however, taken up both by the Chamber of Commerce and the Trades' Association, and both those authorities have pointed out that seven years was too short a period. And looking to the fact that the license contemplated by this Government is in many respects similar to a provisional order, except that the Government takes the place of the Board of Trade throughout, and also to the obvious consideration that capital will not lend itself to an undertaking unless the permanence of that undertaking is guaranteed, or at all events unless it is guaranteed for a very considerable period, the Government have modified the term from seven years to twenty-one years, as the Council would find in the Bill before them. A license is proposed to last for a period of twenty-one years subject to renewal. It is thought that a period of twenty-one years is sufficiently long to attract capital in India, and as long as it is prudent to grant as the term of any license, especially when it is remembered that the action taken under this Act is necessarily of a somewhat experimental character.

[*Mr. Cotton.*]

"Turning to the provisions of the Act, I desire to invite the attention of the Council to a few points. You will observe that the short title of the Act is the 'Calcutta Electric Lighting Act.' But in point of fact this Act follows the phraseology, as far as possible, of the English Law. Its object is not to supply electric lighting, but, as you will see from the preamble, it is a Bill to facilitate and regulate the supply of electricity for lighting and other purposes. It is not intended to limit the provisions of the Act to electric lighting in any way. There are other purposes to which I hope electricity will be devoted, and to which companies formed under the provisions of this Act will, I trust, devote their energies. I merely throw out as a suggestion the substitution of electric tramways for the tramways which we see in Calcutta drawn by horses. That would be an immense improvement when the tropical heat of Calcutta is considered. It would be a great benefit both to the public and the wretched horses employed, if electricity could be substituted for the present means of haulage. Throughout the Act you will find that it contemplates the supply of electricity, and not electric lighting only. That in fact is one of the main principles of the Bill, and it follows in this respect the English Act.

"Section 3 of the Bill empowers the Local Government, which, as I have already said, takes the place of the Board of Trade, to grant licenses, and following the precedent of the English Law, it insists on the consent of the local authority being first obtained. Now in England when a license is granted, the consent of the local authority is absolutely a condition precedent. Unless that consent is obtained, a license cannot be given. In the case of a provisional order the Board of Trade are vested with powers to interfere, and, if they see sufficient reason, to overrule any objection which may be made by a local authority. It has been deemed fit to introduce a similar provision in this Bill. The Council will see that there is a *proviso* that if the Local Government, after due enquiry, are satisfied that the local authority has no sufficient reason for withholding its consent, the Local Government may overrule the local authority and grant a license.

"In the amending law, the English Act of 1888, there is a very important clause amending the first Act, which enacts that the grant of authority to an undertaker to supply electricity in any area shall not in any way prevent the granting of a license or provisional order to any other person or authority within the same area; that is to say, this clause legislates against monopolies; it declares that no

company shall be granted a monopoly. That clause of the section is not introduced in the present Bill, and it will be for the consideration of the Select Committee whether a similar provision should be introduced by law. But I may point out that although there is no monopoly created by law in England, the Board of Trade have declared again and again—it is one of the rules which guide its procedure—that to all intents and purposes the grant of a provisional order under a public Act is equivalent to a monopoly. They have not as a rule allowed two companies to run within the same local area.

"This Bill, following the English Act, contemplates the grant of licenses for particular areas. As you all know, in London the metropolis is as it were mapped out. Wherever there is a demand for electric lighting the local area is defined, and the provisional order relates to that particular area and no other. In the same way it is contemplated that Calcutta may be mapped out; or it may be possible that one single area may suffice for the whole of Calcutta. These are matters which will have to be considered by the Government before a license is granted. In England the generating stations are sometimes of very vast size, and the largest of all the Electric Companies has, I understand, its generating station in Deptford, seven miles at least from the locality supplied with electricity. This implies that the capital of the company is very large. That is not likely to be the case in this country, but the fact shows that electricity can be supplied for lighting and other purposes from a very considerable distance, and it may be unnecessary to divide Calcutta into different areas, if a company is formed with sufficient resources to afford the supply of electricity which may be required.

"Section 4 of the Bill relates to the making of rules, and section 5 to the conditions to be inserted in the license. The rules are intended to regulate the procedure to be followed in applying for a license. In section 4, by some oversight of the drafter, clause (*a*) has found a place by mistake. It provides for the making of rules for securing the public from personal injury. That is a clause which finds its place in the conditions of the license, and ought to be inserted in section 5 alone. That provision is based on the English law, and has reference to the conditions to be mentioned in the license. I need hardly say that the conditions to be mentioned in the license are an important factor with which the public is concerned. The Act itself is a mere skeleton; the flesh and blood will be found in the license to be ultimately granted. The

form of a license is identical with the form of a provisional order. There are many such orders granted, and intending undertakers will experience no difficulty in finding what a license is likely to contain. The Board of Trade have prescribed what they call a model provisional order which, subject to such modifications as the conditions of time and place may render necessary, will doubtless be the model upon which licenses will be granted under this section. It is suggested by the Trades' Association that the law should contain a provision for the limitation of the price to be charged for the supply of the electricity. That is a point which will be fully dealt with in the license. The schedule to the model provisional order states the maximum price to be charged. I have seen some provisional orders in which the prices are somewhat different from those contained in the model order, but, whatever the maximum price may be, that is a detail which need not be contained in the Act, but will find a place in the provisional order or license. In the same way the Engineer to the Calcutta Corporation has suggested that provision should be made for the preparation of maps; now, maps are no doubt very necessary, but the law does not provide for them, it is a detail which is left to the framers of the license.

"The sections of the Act which follow, sections 6 to 11, are very important; they relate to the right the undertakers or company who supply electricity have to break up streets and adopt all other measures which are necessary for laying down their works. These provisions are taken with slight modifications from the Indian Gas Works Act of 1857, modified slightly with reference to the English Gas Works Acts of 1845 and 1871. The English Electric Lighting Act merely declares that the procedure under the Gas Works Act for these purposes shall be held to apply.

"Section 13 touches on a very burning question, namely, the right of the undertakers to erect aboveground works, *i.e.*, whether the electric line should go above the road or below it. This is a matter which has been under consideration in England on many occasions. The English Act requires the express consent of the local authority before overhead wires can be erected. It was thought, however, that such sanction would not afford a sufficient guarantee in this country, and in place of the consent of the 'local authority,' the Bill contains the words 'express consent of the Local Government.' There is no doubt that overhead wires are a source of danger. The wire by which an electric current is maintained for the supply of electricity is of different material,

and much thicker and heavier than the electric wire used by telephone companies. It constitutes by itself a source of danger to the public on account of its weight, and in the interests of the companies themselves it has been felt in England that overhead wires are a source of danger, and that mischievous people are apt to cut them, whether it is done to spite a neighbour, or from pure mischief and thus injure the supply. On the other hand, there is some difficulty in the town of Calcutta in regard to underground wires. It is said that the soil, for some reason or other, renders it extremely difficult to lay down underground wires, and to maintain them in proper condition and order, and that is one of the reasons, as I understand, why the Harrison Road installation has temporarily broken down. At all events there is much to be said on both sides, and it is thought advisable to reserve to the Government the power of sanctioning the erection of overhead wires.

"Section 16 of the Bill is of some importance. I invite attention to this section as giving effect to the principle which I explained to you is one of the main principles of the Act, namely, that the Act is not limited to the regulation of the supply of electricity for electric lighting, but to facilitate and regulate the supply of electricity to whatever use it may be put. It lays down that the undertakers are not to prescribe any special form of lamp or burner to be used by any consumer, or in any way to control or interfere with the manner in which electricity supplied by them under this Act is used; that is to say, the consumer, as he is called under the Bill, may utilise the electricity supplied to him in any way he thinks proper. He can use it as a motive power all the day if he can; he can use it as an illuminating agent all night, if he thinks fit to do so. A second proviso has been added in accordance with the suggestion of the Trades' Association, namely, that no lamps or electric fittings shall be added or reduced without due notice being given to the undertakers to enable them to inspect the wires and make such alterations as may be necessary. This clause is not contained in the English Act, and personally I do not think it is a desirable clause. Whether it should be retained or not is a matter which will receive the consideration of the Select Committee; but as it stands I am not sure that it is consistent with the principle laid down that consumers shall do as they please with the supply of electricity given to them. That supply can always be regulated by a meter, with which every house which is supplied with electricity must be furnished.

"Section 24 of the Bill contains a provision to which I invite attention. The concluding part of clause 2 of that section relates to the protection of telegraph lines. The English Law enacts that any difference between a telegraph authority and the undertakers or their agents in regard to telegraph lines shall be determined by arbitration. In place of Arbitrators, the Local Government has been inserted in this Bill. This was a matter which was discussed between the Government of Bengal and the Government of India, and the Government of India declared, in terms which will doubtless commend themselves to Members of this Council, that it would weaken the safeguards of the Imperial telegraph system if questions affecting the safety of that system were left to be determined by arbitration.

"These are the main points contained in the Bill itself to which I deem it necessary to invite the attention of the Council. The Council will understand that where I have not specially referred to them, the provisions of the Bill follow the lines of the English Act modified as may be necessary to suit the conditions of this country. There is one point, however, not taken up in the Bill, but to which the amending law of 1888 refers. Section 4 of the amending Act of 1888 is aimed at a class of persons who may be described as non-undertakers, that is to say, persons who generate electricity, but who do not apply for a license under the law, and who work on their own account. The passing of this Bill, as I have already explained, will not, in the smallest degree, interfere with the operations of private individuals on their own account, or on account of other people, provided that the rights and convenience of other people are not affected. But there are persons who, relying upon the indifference or ignorance of the public, will not hesitate to lay down lines and works in direct communication with a local authority or individuals concerned without having obtained any license, and who are prepared to run the risk which their trespass on public rights may involve. It is to control such operations that section 4 of the amending Act lays down that the Board of Trade or Postmaster-General may by notice require any persons so using or supplying any electric lines or works to conform to any regulations in the interest of public safety, which may be prescribed, and that in default thereof the removal of such lines or works may be ordered, and heavy penalties imposed. It will be for the consideration of the Select Committee whether a similar clause should not be introduced into this Bill. I am disposed to think that possibly it will be

desirable to do so. In England there have been conspicuous cases, as, for instance, the famous Company known as the Sir Coutts Lindsay Company, who started their works as a sort of free lance. They never applied for a provisional order or license, or anything of the sort, but distributed electricity freely, and adjusted all disputes by compromise with the people who were injuriously affected by their works; they promptly compromised not only with local authorities, but also with all individuals who objected to their overhead wires, or to any other proceedings which they adopted. At last the Sir Coutts Lindsay Company, foreseeing difficulties, went into liquidation, and re-opened under the name of the very largest Company which exists, namely, the London Electric Supply Company. But the origin of that Company was irregular, and it gave rise to the clause in the amending Act of 1888 to which I have referred. Other companies followed their example and carried on trade in several places, in Brighton and elsewhere, but they did not succeed; and it is a matter for consideration whether we should not bring similar undertakings, if they should be attempted in India, under regulation and control.

"These are the observations I have deemed it necessary to make in introducing this Bill. I am afraid I have been somewhat tedious, and have addressed you longer than, perhaps, some of you had expected; but I feel that this is a very important measure, and that the meaning of it is, perhaps, not very clearly apprehended, it may be by Hon'ble Members, and certainly not by the public generally: and it is perhaps, therefore, not inconvenient that I should have explained in this Council at some length the objects of the Bill and the character of its provisions. It is very necessary that this Bill should be carefully examined in Select Committee, and I have no doubt this will be done. We cannot but feel that this is the first attempt which has been made in India to meet such a very technical and difficult matter as the regulation of the supply of electricity, and that our present Bill may become the model for legislation in other Presidencies. If such is the case, I can only trust that it will be found a safe model for other legislatures to follow.

"With these remarks, I have the honour to apply to you, Sir, to suspend the Rules of Business to enable me to introduce the Bill, and to move that it be read in Council.

The Hon'ble THE PRESIDENT having declared the Rules suspended—

[*Mr. Cotton; Mr. Lyall; Mr. Risley.*]

The Hon'ble MR. COTTON introduced the Bill and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accordingly.

The Hon'ble MR. COTTON also moved that the Bill be referred to a Select Committee consisting of the Hon'ble the ADVOCATE-GENERAL, the Hon'ble Messrs. SMYTH and WOMACK, the Hon'ble Babu SURENDRANATH BANERJEE, and the Mover.

The Motion was put and agreed to.

THE BENGAL SANITARY DRAINAGE BILL.

The Hon'ble MR. LYALL moved that the Hon'ble Messrs. BOURDILLON and BEIGHTON, and the Hon'ble MAULVI MUHAMMAD YUSUF KHAN BAHADUR, be added to the Select Committee on the Bengal Sanitary Drainage Bill.

The Motion was put and agreed to.

THE CALCUTTA PORT ACT, 1890, AMENDMENT BILL.

The Hon'ble MR. RISLEY moved for leave to introduce a Bill to further amend the Calcutta Port Act, 1890.

The Motion was put and agreed to.

The Hon'ble MR. RISLEY also applied to the PRESIDENT to suspend the Rules of Business to enable him to introduce the Bill and to move that it be read in Council. He said:—

"On the last occasion when the Calcutta Port Act came under amendment, at the meeting of this Council on the 13th of April last, I explained that the amendment which I have now to introduce formed part of the original proposal to amend the Port Act. It was, however, introduced at a comparatively late stage, after the proposal as a whole had been referred to the Government of India for the consideration of the Secretary of State, and this particular

amendment was held to be of a sufficiently important character to render it necessary to make a further reference to the Government of India and the Secretary of State. That is the reason why this amendment was not introduced with the group of proposals which the Council then had before them.

"I will now explain as briefly as possible the reasons which render this particular amendment of the Port Act necessary. The Port Commissioners possess a large amount of land adjoining their foreshore. This land is vested in them; they have let out portions in plots to various persons, and on such portions and plots shops, huts, and so forth have been built. Up to the time when the Calcutta Port Act of 1890 was passed, and probably for some time afterwards—as far as I can make out from the papers—these huts and shops, together with the portions of land on which they stand, were assessed for the purpose of municipal taxation under what are called the bustee provisions of the Calcutta Municipal Act. That is to say, the Port Commissioners were treated in the same way as the owners of bustee lands in other parts of Calcutta. They were called upon to supply the information necessary to enable the valuation to be made. The entire amount of the assessment was, in the first instance, collected from them, subject to a deduction of one-eighth to cover the cost of collection, and they were enabled afterwards to collect from the owners of the huts and shops, and so forth the entire amount of municipal assessment on these buildings, and half the amount of municipal assessment on the land on which they stood.

"With the passing of the Calcutta Port Act of 1890, all this came to an end. Section 59 of that Act provides a special procedure for valuing the Port Commissioners' property for the purposes of municipal assessment. Their entire property, the docks, machinery, land, and so forth, is valued with reference to the expenditure which has been incurred upon it, and five per cent. on the aggregate expenditure is taken to be the annual value of the property, and on that annual valuation the municipal rates are assessed at the rates authorized by the Calcutta Municipal Act. The practical result of this, with reference to these huts, is that from the passing of the Port Act they could neither be valued for the purposes of municipal taxation, nor could any tax be assessed upon them.

"There are two possible modes of procedure by which these huts can be dealt with for purposes of municipal taxation. One is the procedure laid down

in the Municipal Act for dealing with bustee property; the other the procedure authorised in the case of ordinary properties. The bustee procedure could not be applied, because it contemplates assessment and collection through the owners of the land. The owners of the land in this case are the Port Commissioners, and they having already been assessed on their lands it was held by learned Counsel to whom this question was referred that they could not be assessed again. The other possible procedure—and this experiment was actually tried by the Corporation after they tried the bustee procedure and failed—was to deal with these huts and shops under sections 101 and 102 of the Calcutta Municipal Act as ordinary buildings. Here they were met by another difficulty which proved equally insurmountable. Section 122 of the Municipal Act provides two methods of assessment for ordinary buildings. One of these methods is by taking the annual value to be the gross annual rent at which the house may be let or may be reasonably expected to let. But it is stated that the houses in question are not let, and are not built for letting purposes; consequently the procedure on the basis of the annual rental is not applicable. There is also a procedure, the second mode of valuation, which takes a percentage of the present cost of construction as the annual value, and enables the municipal tax to be assessed on that valuation. But it was held by Counsel that this procedure also, which was the only resource left to the Corporation of Calcutta, was inapplicable. The matter being important, and the opinion somewhat technical, I will read to the Council the relevant portion. MR. WOODROFFE says:—

"It is, however, suggested that inasmuch as the Commissioners of Calcutta are empowered under section 101 of Act II (B.C.) of 1888 to impose rates upon all houses and lands within the town of Calcutta, and under section 122 for the purposes of assessment under that Act to fix the annual value of any house not built for letting purposes and not ordinarily let at 5 per cent. on the sum obtained by adding the estimated present cost of building such house, less a reasonable amount to be deducted on account of depreciation to the estimated value of the land with the houses as part of the same premises, they can, for the purposes of the assessment of these houses or huts built by the owners thereof on land of the Port Commissioners, which has already been assessed, fix their annual value by reference to the cost of their materials without inclusion of the value of the land wherein they are built, and which having been already assessed cannot be reassesed. This, in my opinion, the Commissioners of Calcutta cannot do."

"Section 122 does not authorise any such mode of valuation". The learned Counsel does not state in detail the reasons which led him to arrive at that conclusion, but on looking at the section it seems probable that the difficulty

comes in from the peculiar wording of the latter portion, which renders it impossible to separate the cost of building a house from the cost of the land. If you could deal with these factors separately, there would be no difficulty in doing what the Corporation proposed. But as Counsel has held that it is impossible to do that, the necessity arises for changing the law.

"The result of this failure to proceed under any law at present in force is that the Corporation stand to lose, and have actually lost, I understand, in the past two years or so, a matter of Rs. 20,000 or Rs. 25,000 a year. The Bill proposes to get rid of this complication by inserting two sections, not in the Calcutta Municipal Act, but in the Calcutta Port Act, empowering the Municipal Commissioners to deal with buildings which stand on the lands of the Port Commissioners, quite irrespective of the value of the land. Five per cent. on the cost of building will be taken as the annual valuation, and the Municipal tax will be assessed on that valuation. For the recovery of the Municipal tax those sections provide that they are to have such remedies, powers, rights and authorities as they possess under the Municipal Act. I understand that these sections were drafted by the legal advisers of the Corporation, and its terms seem sufficient for the purpose. The question of this legislation was referred, before these sections were imported into the despatch sent to the Government of India, to the Port Commissioners who said they had no objection, provided another section was added, which provides for their recovering half the consolidated rate paid upon the land. Under the Port Act, as I have already explained, the Corporation claim a consolidated rate on the amount expended in the first instance by the Port Commissioners on their land, and the effect of this section will be merely to put the Port Commissioners in the same position as all other owners in Calcutta who recover half the Municipal taxation from their tenants.

"That disposes of the two sections, proposed to be inserted by section 3 of the Bill, which constitute the main object of legislation at the present time. It is proposed, however, to take advantage of the opportunity of amending the Act to make a formal, but what appears to be a decidedly necessary amendment in sections 35, 105, and 126 of the Port Act, in which where the word "Tramway" is used, the word "Railway" should be substituted. When the Act of 1890 was passed it appears to have escaped the notice of the framers of the Act, and also the notice of those who had to deal with the amendment of the Act in April last, that ever since the 4th of June 1880 the Port Commissioners' tramway has, in fact, been a railway. On that date by a notification under

section 4 of the Indian Railway Act of 1879, which corresponds with section 16 of the Railway Act now in force, that Act was extended to the railway belonging to the Commissioners for making Improvements in the Port of Calcutta. This was done at the request of the Port Commissioners themselves, who applied to the Government in the middle of 1879, and requested that their tramway might be brought under the operation of the Railway Act then in force (Act IV of 1879). They proposed, it is true, that it should be done by a notification under section 54 of the Act, but the Government of India seem to have been of opinion that that section was not applicable. It is section 54 of their Act, which provides that steam tramways might be held to be railways. The Government of India held that the Port Commissioners' Railway was not and never could be described as a tramway, and they made the notification under the section empowering the Port Commissioners to use locomotive power on their 'railway,' and ever since that time, the so called tramway has been a railway. So the proposed change in the Act consists simply of the substitution of the word 'Railway' for 'Tramway,' the object being to bring the Port Act into accord with the Railway Act and to remove any doubts which may exist as to the legal status of the Port Commissioners as regards the carriage of goods and business transaction with other railways."

The Hon'ble THE PRESIDENT having declared the Rules suspended—

The Hon'ble MR. RISLEY introduced the Bill and moved that it be read in Council.

The Motion was put and agreed to.

The Bill was read accorindgly.

The Hon'ble MR. RISLEY also moved that the Bill be referred to a Select Committee consisting of the Hon'ble the ADVOCATE-GENERAL, the Hon'ble MESSRS. SMYTH and WOMACK, the Hon'ble RAI DURGA GATI BANERJEA BAHADUR, the Hon'ble BABU SURENDRANATH BANERJEE and the Mover.

The Motion was put and agreed to.

The Council adjourned to Saturday, the 13th instant.

C. E. GREY,

Offg. Assistant Secretary to the Govt. of Bengal,
Legislative Department.

CALCUTTA;
26th July, 1895.

Reg. No. 390G—300—27-7-95.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892.

The Council met at the Council Chamber on Saturday, the 13th July, 1895.

Present:

The Hon'ble Sir Griffith Evans, K.C.I.E., Offg. Advocate-General, *presiding.*

The Hon'ble H. J. S. Cotton, C.S.I.

The Hon'ble D. R. Lyall, C.S.I.

The Hon'ble J. A. Bourdillon.

The Hon'ble C. E. Buckland, C.I.E.

The Hon'ble H. H. Risley, C.I.E.

The Hon'ble R. C. Dutt, C.I.E.

The Hon'ble Rai Durga Gati Banerjea Bahadur, C.I.E.

The Hon'ble Surendranath Banerjee.

The Hon'ble J. G. Womack.

The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.

The Hon'ble C. E. Smyth.

The Hon'ble A. M. Bose.

NEW MEMBER.

The Hon'ble Mr. A. M. Bose took his seat in Council.

THE BENGAL SANITARY DRAINAGE BILL.

The Hon'ble Mr. Lyall presented the Final Report of the Select Committee on the Bengal Sanitary Drainage Bill.

The Council adjourned to Saturday, the 20th instant.

C. E. GREY,

Offg. Assistant Secretaray to the Govt. of Bengal, Legislative Department.

Calcutta ;

The 26th July, 1895.

Reg. No. 391G—300—27-7-95.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892.

The Council met at the Council Chamber on Saturday, the 20th July, 1895.

Present:

The Hon'ble Sir Charles Alfred Elliott, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The Hon'ble Sir Griffith Evans, K.C.I.E., *Offg. Advocate-General.*

The Hon'ble H. J. S. Cotton, C.S.I.

The Hon'ble D. R. Lyall, C.S.I.

The Hon'ble J. A. Bourdillon.

The Hon'ble C. E. Buckland, C.I.E.

The Hon'ble H. H. Risley, C.I.E.

The Hon'ble R. C. Dutt, C.I.E.

The Hon'ble Rai Durga Gati Banerjea Bahadur, C.I.E.

The Hon'ble Surendranath Banerjee.

The Hon'ble Maharaja Jagadindra Nath Roy of Nator.

The Hon'ble Maulvi Muhammad Yusuf, Khan Bahadur.

The Hon'ble C. E. Smyth.

The Hon'ble A. M. Bose.

The Hon'ble Rai Eshan Chunder Mitra Bahadur.

NEW MEMBER.

The Hon'ble Rai Eshan Chunder Mittra Bahadur took his seat in Council.

PROSPECTS OF BENGALI INSPECTORS OF THE CALCUTTA POLICE FORCE TO PROMOTION AS SUPERINTENDENTS OF THAT FORCE.

The Hon'ble Babu Surendranath Banerjee asked—

Will the Government state how many Superintendents there are attached to the Calcutta Police Force, and how many of them are Bengalis. Is it true that the claims of Bengali Inspectors attached to the Calcutta Police Force have, in many cases, been overlooked in favour of juniors who have been

appointed Superintendents in preference to them? Do the orders of Government appointing two natives of India as Assistant Superintendents every three years apply to Indian Inspectors employed in the Calcutta Police? If not, will the Government be pleased to state what prospects of promotion are held out to them?

The Hon'ble MR. COTTON replied:—

"There are eight Superintendents attached to the Calcutta Police, of whom at present two are Bengalis. One of these holds the post of senior Superintendent on Rs. 500 a month, and the other is an Inspector who is officiating as a Superintendent.

"The Lieutenant-Governor is informed by the Commissioner of Police that it is not the case that the claims of Bengali Inspectors have been overlooked in favour of juniors who have been appointed Superintendents in preference to them.

"The Calcutta Police is treated as a separate service from the Bengal Police, and the orders referred to do not apply to Inspectors in the Calcutta Police. Those officers have prospects of promotion in their own service."

REPEAL OF ACT X OF 1859 (THE OLD RENT LAW).

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Will the Government be pleased to state why it is not proposed to repeal Act X of 1859 (the old Rent Law), which is now in force in the Western Duars, notwithstanding the recommendation of the Commissioner of the Division to that effect? Seeing that a Bill has been introduced to repeal Act XVI of 1869, with a view to bring within the cognisance of the Civil Courts all suits belonging to immoveable property, &c., arising in the Duars, will the Government consider the propriety of further extending the scope of the legislation now undertaken by repealing Act X of 1859 and extending to the Duars the provisions of the ordinary Rent Law which is in force in other parts of Bengal?

[*Mr. Buckland; Maharaja Jagadindra Nath Roy of Nator.*]

The Hon'ble MR. BUCKLAND replied :—

"It is not proposed to repeal Act X of 1859, because it is not in force in the Western Duars, and the Commissioner of the Division, presumably knowing that it is not in force there, has not recommended its repeal.

"The Government cannot consider the propriety of repealing an Act which is not in force in the Western Duars. It has been decided, if Act XVI of 1869 is repealed, to extend to the Western Duars, the Rent Law which is in force in the rest of the Jalpaiguri district, viz., Act X of 1859. It is not considered desirable to have different portions of a district subject to different Rent Acts. The provisions of the Bengal Tenancy Act are not considered suitable to the tenures existing in the Jalpaiguri district."

ALLEGED BANISHMENT OF ALL SANSKRIT GRAMMAR FROM THE CURRICULUM OF STUDIES IN THE GOVERNMENT SANSKRIT COLLEGE.

The Hon'ble MAHARAJA JAGADINDRA NATH ROY OF NATOR asked—

Has the attention of the Government been drawn to the paragraph in the *Indian Nation* of the 15th instant dwelling upon the alleged banishment of all standard Sanskrit Grammars from the curriculum of studies in the Government Sanskrit College by the introduction of a book of much inferior merit compiled by the present Principal of the College? If so, will the Government be pleased to make an enquiry into the matter?

And if on enquiry the allegations be found true, is the Government prepared to take such steps as would remove this stumbling block in the way of acquiring a real knowledge of Sanskrit language and literature?

The Hon'ble MR. BUCKLAND replied :—

"The Lieutenant-Governor learns that the paragraph in the *Indian Nation* is not correct in asserting that 'Sanskrit Grammar has been practically banished from the curriculum of studies in the Government Sanskrit College.' It appears that four different works on Sanskrit Grammar were in use in different classes of the college and school, three of which are still in use unchanged.

[*Mr. Buckland; Maharaja Jagadindra Nath Roy of Nator.*]

The fourth book, the Magdhabodha, to which reference is made in the question, was used in the first-year college class and in the second to the seventh school classes. The Principal has now substituted for the Magdhabodha in the college class a work of standard excellence by Pandit Vidyasagar. The Magdhabodha is still used in the second and third school classes. In the fourth to the seventh school class the Principal has introduced a work of his own, called Mani Manjari, written in Sanskrit, not in Bengali, which is said to be easier and more suited to junior students than the Magdhabodha, a work of admitted obscurity. This substitution has not yet been approved of by the Director of Public Instruction, and is still under his consideration."

EDEN HINDU HOSTEL, CALCUTTA.

The Hon'ble MAHARAJA JAGADINDRA NATH ROY OF NATOR asked—

Is the Government aware that the Eden Hindu Hostel of Calcutta, originally established for the convenience of the mufassal students who come to Calcutta to prosecute their studies at the University, has recently been reserved exclusively for the students of the Presidency College? and if so, will the Government be pleased to take steps to restore the Hostel to its former status?

The Hon'ble MR. BUCKLAND replied:—

"The Eden Hindu Hostel was originally established for the convenience of mufassal students prosecuting their studies at the University, but was not reserved, either by trust deed or by practice, for the students of any particular College, though, as a matter of fact, from the commencement the great majority of the residents in the hostel have been students attending at the Presidency College.

"The Lieutenant-Governor has decided that he will build a boarding-house, in which residence should be compulsory for mufassal students of the Presidency College, who do not live with their parents or guardians.

"It was at first proposed to make this boarding-house independent of the Eden Hindu Hostel.

[*Mr. Buckland; Babu Surendranath Banerjee.*]

"On the 8th April last the Board of Trustees met and proposed the following Resolution:—

1. *Resolved.*—That as the Government of Bengal has decided to build a hostel for students of the Presidency College, and as such students form the great majority of the residents of the Eden Hindu Hostel, the result of the Government decision, of which the Trustees fully approve, will be to seriously reduce the number of resident students and render it difficult, if not impossible, for the Trustees to carry on the hostel. In these circumstances, the Trustees are of opinion that the best course for them to adopt, in the interests of the students, and with the object of carrying out completely the purposes for which they have been appointed, will be to hand over the building and land now occupied by the Eden Hindu Hostel to the Government for the purposes of the projected hostel upon such conditions as may be determined.

2. That these conditions be the following:—

(1) that the hostel be retained as a hostel for Hindu students;

(2) that Government pay off the existing liabilities of the hostel, amounting to about Rs. 3,000 more or less, in consideration of the furniture and library of the hostel which the trustees are prepared to hand over to Government on that understanding.

"The conditions were accepted by Government, and an additional block is being constructed alongside of the original building which will nearly double the accommodation.

"Any students belonging to other colleges who are now resident in the Eden Hostel will be permitted to remain; but in future a preferential claim to the accommodation in the Hostel will vest in students of the Presidency College and the two Entrance schools attached thereto. If any space is left unoccupied by them, students from other colleges will be admitted. No change has taken place in the object for which the hostel was originally designed, and no condition was contained in the trust deed antagonistic to the limitation now imposed."

ALLEGED MURDER AT CHITTAGONG.

The Hon'ble Babu Surendranath Banerjee asked—

I should be glad to know if the Government are now in a position to afford me the information promised in answer to the question I put in Council on the 6th July regarding an alleged murder case in Chittagong.

[*Mr. Cotton.*]

The Hon'ble MR. COTTON REPLIED:—

"The Magistrate of Chittagong has now fully reported upon the case referred to in the Hon'ble Member's question. The facts appear to be as follows:—

"On the 15th July, 1894, the servant of the Chaplain, the Revd. Mr. Salkeld, who lived in the dák bungalow, reported to a head-constable that a murder had been committed by Babu Kanti Chunder Ghose in a house adjoining the dák bungalow. This information was entered in the station diary at 11-20 P.M., and a police officer was sent to enquire, who returned saying he could find nothing in the house to corroborate the information. Next day on the 16th July, 1894, the Sub-Inspector of the town station in Chittagong reported to the Magistrate of the district that a false charge had been made by a servant in the employ of the Revd. Mr. Salkeld that a murder had been committed by Babu Kanti Chunder Ghose, a railway contractor, and requested that Mr. Salkeld's servant might be prosecuted for laying a false information. It appeared to the Magistrate, Mr. Anderson, that the charge was assumed to be false on incomplete grounds, and he directed Mr. Daly, the Officiating District Superintendent of Police, to enquire into the matter personally.

"After this, anonymous petitions were received, charging Babu Kanti Chunder (without any such further specification as Roy or Ghose), the railway contractor, with the murder. There was no doubt whatever as to who the person was at whom the petitions were aimed.

"On the 21st July Mr. Daly arrested Babu Kanti Chunder Ghose on suspicion and brought him before the Magistrate, who passed the following order:—

'Kanti Chunder Ghose has been brought before me, and I direct that he be kept in *hajat* under section 167, Criminal Procedure Code, for a period of 15 days or less in case a final report be received. There is strong suspicion that on the night of Sunday, the 15th instant, he so severely assaulted his servant that the man died, and there is some evidence to show that the body (that of a stranger) has been concealed. Accused is himself a stranger and is said to be leaving Chittagong by to-morrow's steamer.'

"On the 23rd July an application to release the accused on bail was made. The Magistrate called upon the District Superintendent to show cause why Babu Kanti Chunder Ghose should not be released on bail. On the 24th July Mr. Daly produced eight witnesses whose statements were fully recorded by

the Magistrate. This evidence has been laid before Government, and it appears from it that Mr. Salkeld's servants declared that they had seen the accused severely beating a man who was lying on the ground, and that Mr. Salkeld and his mother-in-law, who lived with him, deposed to having heard blows and groans. On the 25th July the Magistrate passed the following order refusing bail:—

'The District Superintendent of Police has shown cause by sending up some witnesses whose statements I have recorded. There seems to be no reason to doubt that some one was cruelly beaten on the night of the 15th July: that the only servant now in the employment of the accused person was not the person who was beaten (I have examined him, and he has no bruises or other marks). There is evidence that accused immediately called in the assistance of a Police Inspector (Officiating Inspector Rajani Kanta Chaudhuri), and that whatever occurred was at once hushed up. I mention all this to show that there is, at least, the gravest cause for suspecting that the accused's servant succumbed to a very severe beating, and that the body was smuggled away. Then I must remember that the accused person is not only a man with much local influence, but also a foreigner, a man who could easily make his escape into hiding outside the district. As the offence with which he is charged is non-bailable, I think there is more than enough evidence to justify the detention of the accused in custody.'

"Two or three days after this Mr. Daly was transferred to another district, and Mr. Anderson went away on leave. On the 6th August an application was made by the police to Mr. Allen, who was officiating as Magistrate, for a second remand of ten days, and this was granted by him in the following order:—

'I have very carefully considered the special diaries, statements recorded, and all the proceedings of this enquiry. I am of opinion that the enquiry is not yet complete, inasmuch as further investigation is necessary to ascertain the whereabouts of the man who is alleged to have been murdered. This man is reported to be missing, and until his whereabouts are ascertained, or a reasonable opportunity for enquiry has been granted, the case cannot be closed. All the reasons recorded by Mr. Anderson on the 25th July last therefore still apply, and I therefore under section 167, Criminal Procedure Code, remand the accused to *hajat* for a further period of ten days, or until such date within that period as the enquiry may be completed.'

"On the 11th August an application was made to the Sessions Judge for the release of the accused on bail, but Mr. Caspersz declined to interfere.

"On the 15th August another application for a third remand was made to the Magistrate by the police; but, as it was clear by this time that further

evidence was not likely to be found, Mr. Allen directed the release of Babu Kanti Chunder Ghose on bail in the following order:—

'A further application has been made by the police for remand in *hajat* for seven days, the grounds mentioned being general only. I do not think I should be justified in granting a further remand in *hajat*, unless the nature of the evidence which is likely to be obtained were in some way specified, and unless it was explained why this evidence has not been forthcoming earlier. This has not been done, and I am not justified therefore in remanding the accused to *hajat*. There is, however, evidence to implicate him in the murder, and I therefore order him to find bail as follows, viz., his own recognizances in the sum of Rs. 1,000, and four sureties in the sum of Rs. 250 each, to appear before this Court on the 22nd instant, or at any earlier date upon which he is called upon to appear.'

"On the 22nd of August Mr. Allen declared that there was no further reason for detaining the accused, and directed that he be discharged from bail and recognizances.

"With reference to the Hon'ble Member's question whether the man who was supposed to be murdered was found living in the Backergunge district, I have to say that it is the case that enquiry was made in Backergunge about a man named Jotendro Mohun Bose, who was asserted to have been once in Babu Kanti Chunder's service, and that this man was ascertained to be alive in that district; but there was no evidence to prove that he ever was in the service of the accused or was in any way connected with this case.

"The Lieutenant-Governor has examined the records submitted by the Magistrate, and, while he is satisfied that there was ample room for suspicion and enquiry, he does not consider that there is any reason for thinking that the Magistrate or District Superintendent of Police showed any want of discretion in their treatment of the case."

THE BENGAL SANITARY DRAINAGE BILL.

The Hon'ble MR. LYALL moved that the final report of the Select Committee on the Bill to facilitate the construction of drainage works for improving the sanitary condition of local areas be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered in the form recommended by the Select Committee.

[*Mr. Lyall ; Babu Surendranath Banerjee.*]

He said:—"I do not propose to detain the Council now with any general remarks, but would defer to a later stage any such remarks which I might have to make."

The motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that for clause (*c*) in sub-section (2) of section 6, the following be substituted:—

"An estimate showing, as the District Board may direct, (*a*) the rate bearing the definite proportion to the Road Cess payable direct to Government, or (*b*) the assessment on each village within the affected area, the amount being raised by levying at the discretion of the District Board a tax upon persons occupying holdings within such tract according to their circumstances and property, or by levying a rate on the annual value of holdings situated within such tract:

"Provided that the amount specified in the estimate shall provide for the payment with interest in the course of thirty years of (*b*) and the capitalized value of (*c*), excluding the portion to be incurred in respect of the municipal area, if any."

He said:—"I desire first to say a word or two with reference to a feeling of alarm which may be created in the minds of hon'ble members at the sight of the formidable array of amendments standing in my name. I wish to point out that several of these amendments hang together, and that they depend upon the success of the amendment which I have now the honour to move. For instance, amendments Nos. 1, 4, 7 and 9 are practically part and parcel of one and the same amendment. They relate to the financial clauses of the Bill. If amendment No. 1 be accepted, then it will follow, as a matter of course, that the other amendments to which I have referred must also be adopted with such modifications as the wisdom of the Council may dictate; but if this amendment be lost, the others must also fall with it. As far as the other amendments are concerned, it will not be necessary for me to speak at any length.

"I feel it my duty to congratulate the Government on the thorough discussion which has been accorded to this Bill. Whatever may be the defects of the Bill—and these are neither few nor insignificant—it will be conceded on all hands that the measure has received the most careful consideration at the hands of the Select Committee, and I venture to add of the public at large. It was twice referred to two different Select Committees. It were much to be wished that some of the new members of this Council were on the Select Committee

recently appointed. It was twice published in the official Gazette. On two separate occasions the opinions of public bodies and of the high officers of Government were invited. As the result of this exhaustive enquiry, we have this Bill before us. As might have been anticipated, the Bill which now awaits the consideration of the Council is a very different measure from the Bill which was introduced in 1894. The Bill recognizes the principle of local option. Under the Bill as originally introduced the Magistrate or the District Board could initiate any drainage project. Under the Bill now before us, the initiative rests with the District Board, and the District Board alone. The District Board may initiate, may approve, may modify, or may reject any proposal. Nor is this all. The representatives of the landed interest have a voice in the deliberations connected with any drainage scheme. Hon'ble members who have carefully studied the Bill will not have failed to note the responsible functions which the Drainage Commissioners are required to perform under the Bill. Their decision will be final except when the District Board at a special meeting called for the purpose should, by a majority of two-thirds of the members present, decide to set it aside. These, so far as they go, afford sufficient guarantees that public opinion will be consulted and will not be disregarded. I desire once more to affirm that the Government in introducing this measure has been actuated by the purest and the loftiest motives. I do not care to discuss the question whether malarial fever is due to poverty or to obstructed drainage. There is a large body of medical evidence—the evidence of experts whose opinions are entitled to the highest weight and consideration—which places this matter beyond the pale of doubt and controversy. It is admitted beyond dispute that obstructed drainage is the chief, if not the only factor in producing malarious fever, and that poverty accentuates the conditions which produce the disease.

"But the difficulties of the Bill lie in respect of its financial clauses. I should rejoice if the Government could see its way to enact this Bill into law without imposing any cess or rate upon any section of the community. I would go further and observe that the public had a right to expect immunity from taxation for the purposes of this Bill. Let me briefly remind the Council of the circumstances connected with the passing of the Road Cess and the Public Works Cess Acts. The Duke of Argyll was then Secretary of State; he indited a despatch—it is a memorable document—in which he distinctly laid

down the principle that the Road Cess which was to be levied on villages should be primarily devoted to the sanitary improvement of those villages. Has that been done? No. If this had been done, there would have been no necessity for a measure of the kind now before the Council. Nor is this all. The Road Cess has been charged with works which used to be carried out either from Imperial or from Provincial funds. Then again, when the Public Works Cess Bill was introduced into this Council, Mr. Herbert Reynolds (a name held in honour by all ranks in this Province), who was in charge of the Bill, distinctly declared from his place in Council that the proceeds of the Public Works Cess were to be devoted to meeting famine charges and certain other extraordinary Public Works charges which he specified. But after defraying those charges we have an annual surplus balance of nearly 11 lakhs of rupees, as was shown by the Hon'ble Mr. Bourdillon in his financial statement this year. What becomes of this balance? It is devoted to the carrying out of ordinary public works. If that balance were available, would it be necessary to impose any rate or cess under the Bill now before the Council? I submit not. Under the circumstances I trust I shall not be deemed an irreconcilable if I venture to record my respectful but firm protest against any tax or rate being levied upon any section of the community for the purposes of this Bill. The proceeds of the Road Cess and of the Public Works Cess ought to suffice to meet the expense of the drainage schemes that may be carried out under this Bill. In proposing this amendment, it must not be supposed that I acquiesce in any system of taxation contemplated under the Bill. As taxation is, however, inevitable, my amendment proposes alternate schemes which are less open to objection.

"It is proposed under the Bill to meet the charges of drainage works by the addition of a definite proportion to the Road Cess. On whom would such a tax fall? On the landed interest alone. But who would be benefited by these works? Not only the landed interest, but all interests; the artizan, the shopkeeper, the trader, the zamindar, the raiyat, would equally benefit from the sanitary works proposed to be carried out under this Bill. Manifestly, therefore, it is inequitable to tax a particular section of the community for blessings which would be shared by all. The object of my amendment is to rectify this anomaly. I propose that, subject to the discretion of the District Board, the charges for drainage works should be met by an addition to the road cess or by a tax

upon persons occupying holdings according to their circumstances and property, or by a rate on the annual value of the holdings situated within the local area. The last two forms of taxation would include everybody benefited by the drainage scheme. But I have been told by hon'ble members of the Select Committee and by the members of the Government, that my schemes are impracticable; and a morning paper, which amuses and instructs us from day to day, has improved upon the situation by observing that, being born and bred in Calcutta, I ought to hold my tongue when a measure is introduced in this Council affecting mufassal interests. Well, Sir, I have not yet learned to hold my tongue. That may be a defect in my education, but I am too old to unlearn. I may be an ignoramus in regard to mufassal affairs, but there are others who are differently situated—experts intimately acquainted with the mufassal and with the working of Local Self-Government in the mufassal, both within municipalities and local areas. I have taken the precaution of consulting some of these gentlemen, men of light and leading in the mufassal, and I have got their replies. I do not want to read those replies to the Council in full, but I will read one or two extracts from them with a view to show that, in the opinion of gentlemen who are conversant with the working of the system of Local Self-Government in rural tracts, the scheme which I have ventured to formulate is a scheme which is workable. The Vice-Chairman of the Hooghly District Board, Babu Lalit Mohan Singh, says—'In reply I beg to say that I do not think the two schemes to be impracticable. I would have given my reasons if my answer had been otherwise.' Therefore, in the opinion of this gentleman, intimately acquainted with the working of the District Board and of Local Self-Government in the mufassal, the scheme which I propose is feasible. Another letter is from a very distinguished Municipal Commissioner, a gentleman who at this moment is contesting the Dacca Division for representation in this Council, Babu Guru Proshad Sen. He says—'I do not think (*b*) and (*c*) would involve any impracticable scheme. As you point out, the chaukidari assessments are made under that system.' Then there is a letter from Rai Jadunath Mukerjee Bahadur, Government Pleader of Hazaribagh, who says: '(*b*) and (*c*) follow the municipal law, and it is quite fair that one or other of these methods should be adopted in the matter. The assessments may be made in the manner they are made in the municipalities and by the adoption of one of those methods. Those who would otherwise escape assessment will come in under the law.' Babu Pyari Lal Roy, who for

many years was a member of the District Board of Barisal, says:—'I like your (*b*) scheme, and I would make it compulsory and not leave the matter to the discretion of the District Board.' And, lastly, I have a letter from Baboo Baikantonath Sen, late Chairman of the Berhampore Municipality and the leader of the Berhampore Bar. He says:—'In reply to your letter of the 12th instant, I have at the outset to express my approval of your suggestion regarding the imposition of a tax as contemplated in (*b*) and (*c*). The panchayat agency might also be used for the assessment and collection of the tax, and I think efficiency and economy would both be secured. * * * I cannot understand why the imposition of the tax contemplated in (*b*, cannot be satisfactorily effected. Village Unions have come into existence in some places, and whenever available their services also might be utilised.'

"Here we have the opinion of a body of experts, and I think the Council should attach some little weight to that opinion. But why should the scheme be held impracticable? I think it very unfair to pronounce judgment before trial. Have you tried it, and have you found it to be impracticable? You have not; therefore you are precluded from expressing an authoritative opinion upon the matter. Many schemes which are held to be impracticable at the outset have been found to be quite feasible in their working. Therefore, I say we ought to give it a fair trial before we pronounce judgment against it. The panchayat may be used for the purpose, or an assessor may be appointed, or any other agency the Magistrate thinks fit may be employed. I am free to admit that the appointment of an assessor would involve a little more expense, but then the system of taxation I propose will be a little more remunerative, as it will embrace a wider circle of the population.

"Then it is to be borne in mind that my amendment proposes alternate schemes. It is not obligatory on the District Board to adopt the forms of taxation I have put forward. They may make their choice. If they find them to be impracticable, they will not adopt them; and if the majority of the District Boards come to the same conclusion, my scheme will die a natural death. No one will regret it, not even the unworthy individual who now stands sponsor to it. Thus it is evident that the Government will lose nothing by the acceptance of the alternate schemes which I have put forward.

"Nor is this all. It would be a source of great moral strength to the Government to be able to convince the people by the adoption of the alternate

schemes which I have suggested that the Government did what lay in its power to avoid an inequitable system of taxation. If you have three alternate projects on the statute-book, and the addition to the Road Cess is uniformly accepted in preference to the other methods of taxation, those who pay it will be reconciled to it; they will regard it as the only practicable scheme; they will submit to the inevitable. Is it not a distinct advantage to the Government to be able to carry the people with them in any legislative project, and especially one which involves the imposition of a new tax? I desire to press this consideration upon the attention of the Government. I feel that by accepting these alternate schemes the Government will have taken an important step towards conciliating popular opinion, removing a felt grievance, and making less unpopular a measure which is admitted to be highly unpopular."

The Hon'ble MR. LYALL said—"The hon'ble member who has just moved this amendment has commended it to the Council on the principle of its being a very little amendment, but I hope I shall be able to convince the Council that the amendment will be practically unworkable. The Council will observe that the foundation of the cess or rate which it is proposed to lay on the people under this Bill is a thirty-years' term. If it is necessary for a rate to be levied for thirty years, it should have some stable foundation. What my hon'ble friend has proposed is in the form practically of an income-tax, a tax on the circumstances of the people, which will vary every year. There will be no stability; one man goes away, another dies, a third fails in his business. Again, we should have the whole oppressive system of the machinery of the income-tax applied for the assessment of the tax. We all hope that this rate wherever it is imposed will be a light one, but if it is imposed in the way in which my hon'ble friend proposes, we should impose the greatest possible amount of tax on the people, and do the greatest possible injury to them. This fact was very forcibly brought forward some six years ago in this Council. Speaking of the assessment of the chaukidari tax by assessors, the Hon'ble MR. ANUNDO MOHUN BOSE spoke of 'the evil of the tax-gatherer going from hovel to hovel and collecting from each his quota, and perhaps, not unfrequently, a good deal more. A great deal had been heard in this country in connection with the fiscal measures of the Government of the evils of direct taxation, not necessarily attendant on the system, but under the circumstances of the country; but when an unsympathetic Government tax-gatherer, with all the powers proposed to be conferred on him and who must render

his account at a certain time, went from house to house to collect the tax, it must necessarily open the door to a great deal of oppression and create discontent among the masses.' I say that that fear is shared all over the country. We know that even in the case of the income-tax which is assessed on the people with infinitely more care, we do not get it fairly assessed, although we employ persons of a considerably higher status than would be employed for the assessment of a petty tax such as this. And I go further and say that the hon'ble member has given us nothing that will work; he has not provided for the pay of the assessor and for including it in the estimate. I will not detain the Council by quoting from Mr. Munro's report on the working of the Chaukidari Act; the Council know how it was there stated that the rich and the Brahmans were exempted from taxation, and the poor alone were assessed. The punchayet would in the same way use the power which the amendment proposed to confer upon them for their own benefit. Then my hon'ble friend does not propose to give the Collector the assistance of an assessor or a punchayet until he comes to the last stage. Under his 6th amendment he proposes that the Collector shall make the assessment how he may: he gives him no machinery. The Collector has no machinery fit to revise the estimates; he would have to employ men, and where were the men to come from? The hon'ble member does not object to the proposal of the Select Committee; but he would weld his own proposals with it. I venture to say that the proposal of the Select Committee will really do justice. In this country it is known as a fact that almost every man is a landholder. I will read an extract from the *Amrita Bazar Patrika* of 28th February last. This paper objected to the Bill 'as throwing an additional tax upon the landholding and agricultural communities, that is to say, on the whole Province of Bengal, for there are few men in Bengal who do not hold land in some way or other.' This newspaper therefore admitted that the imposition of this tax on the land was fair. I will go further and say that the land is stable; the land is there, and we shall be as sure to get our tax thirty years hence as on this day, and I know no other way of having such surety. I have already said that under the hon'ble member's proposal there would be no certainty that the amount of the tax would be the same from year to year; the Collector would have to vary the rate of tax, and that would be undesirable. For these reasons I venture to submit that the proposal of the Select Committee is the cheapest and best possible of all. There is the machinery ready and at hand, and it will cost nothing to extend it to this small extent. The landholder will not have to

employ a single extra gumashta, nor will the Collector have to add to his staff of peons and amla. We have the machinery ready for use. I venture to say that although the proposal of the hon'ble member sounds well, it is so only seemingly, but in practice it will be found unworkable; and I therefore ask the Council to reject it."

The Hon'ble MAULVI MAHOMED YUSUF said:—"I submit that this amendment should not be accepted. The question raised in the amendment was fully discussed in the Select Committee, and the conclusions of that Committee were arrived at after due deliberation, and after a careful and mature consideration of the various courses suggested by the members of the committee: the result was that the only feasible and practicable course that could be found was that embodied in the Bill: other ways were suggested, but on examination they were found impossible. As far as the speech of the hon'ble mover of the amendment goes, the matter remains now where it stood in the Council, and no attempt has been made even now to show how the suggestions overruled by the majority of the Select Committee would be practically carried out. Therefore the objections raised in the Select Committee to what is contained in the amendment, not having been met, the question remains in the same state. One view was suggested in the Select Committee, and the same is foreshadowed, if not expressly put forward, in the speech of the hon'ble member, viz., 'If the scheme is not feasible, I do not put it forward as a compulsory scheme, let it remain as an alternative scheme open to the District Board; if they think the scheme not to be feasible, they need not adopt it.' In reply to all this I say that if it is not possible at the present moment for any hon'ble member to point out the practicability of the scheme proposed or suggested, it is not consistent with reason that the statute should provide that scheme to be one open to the District Board to adopt. And we should not forget that if this scheme is to find a place in the Bill even as an alternative measure, it will go forth to the public as a scheme which this Council held as a possible scheme; the scheme will thus be stamped indirectly with the sanction of this Council in regard to its feasibility, and it will be urged hereafter that if the scheme had not been feasible, then the Council of the Lieutenant-Governor would not have allowed it to find a place in the Bill; the intentions of the Council would thus be liable to misconstruction, and in practice feasibility would be forced on the scheme. I therefore think that this amendment will work incalculable mischief, without resulting in the smallest good to the community.

[*Rai Eshan Chunder Mittra Bahadur.*]

The Hon'ble RAI ESHAN CHUNDER MITTRA BAHADUR said:—"This is the first time I appear before this Council, and therefore I shall be excused if I do not exactly conform to the rules and the procedure of this Council. My ideas on the subject before the Council are these—Any proposal to tax a community according to their circumstances and property would lead to the levying of a tax in the shape of an income-tax, and if such a proposal is adopted, the result will be that enquiry must be made into the circumstances of each person who lives within the local area, both as to his income from personal property and from his real property. And I may be permitted to observe that such a tax would operate as a second income-tax. The amendment proposed is, no doubt, equitable in principle, but it would be difficult, as I said before, unless it is allowed to work as an income-tax, to ascertain what is the position of particular individuals in order to fix the assessment upon them. Then again a certain income has to be calculated upon for thirty years, but the circumstances and property of individuals might vary within that period, and how is the fixed income which is needed to be then obtained? Moreover, I think, from what I know of the mufassal, that such a provision would hardly be liked by the people. I find that under this Bill landholders will have to take upon themselves the liability of paying and also partly recovering from the cultivating raiyats the sanitation cess, but the question is whether any tax can be appropriately levied in matters like these, unless we tax the land. The land has already been taxed heavily; landholders have to pay land revenue, they have to pay the road cess, they have to pay the public works cess, and also other cesses, but it is said that there is no feasible way of realising the money which would be spent in making any improvement, unless we can tax the land itself. I may be permitted to observe that there are only two modes of taxation in matters like these—first, in regard to a man's position and occupation, and secondly, regarding him as a holder of property; and if we go to assess him upon his means and his property, we have to enquire into particulars to ascertain what the assessment should be. I submit that a tax like the one contemplated under this Bill ought to be as small as it possibly could be. If land is to be taxed I can only say, with regard to the section which refers to the realisation of dues under process issued under the Road Cess Act, that instead of realising half from the zamindar and the other half from the patni-holder and the raiyats, we should divide that liability into smaller component parts—say one-fourth from the zamindars, one-fourth from the patni tenure holders, and the other half from the raiyats

who would be mostly benefited by the improvement both in regard to their health and the condition of their lands. The liability of zamindars and tenure-holders, many of whom are non-resident, should be reduced, and the raiyats should bear a greater portion of the burden, because they are the persons who will be mostly benefited. In that case the tax would not operate with that degree of hardship to which my hon'ble friend, the mover of the amendment, has objected. I have not been able to consider whether such a scheme is feasible, but I hazard this proposal because I think that in order to make the tax acceptable to landholders it should be reduced. I commend this proposal to the consideration of the Council, because landholders will not be paying this tax for their own benefit, but for the benefit of their tenants, the raiyats, and they ought not to be taxed to the same extent as those who will be actually benefited. All I need say is that I consider the rate which is to be paid by landholders and tenure-holders to be rather high; they would not be benefited as much as the actual occupiers of the villages, and I submit that the Council should agree to a compromise by reducing the liabilitity of landholders and tenure-holders, and putting the rest of the expenditure upon the occupiers of the land and upon the contributions from Government and the District Board. It may be said that the raiyats are poor; still they are the most benefited, and under those circumstances they ought to pay comparatively more than landholders and tenure-holders who are mostly non-resident."

The Hon'ble MR. A. M. BOSE said—"Not having had an opportunity of fully studying the question which has been before the Council now for more than a year, I had not intended to take part in this discussion; but after the reference which the hon'ble member in charge of the Bill has done me the honour of making to a previous utterance of mine in this Council, I think it necessary to state shortly my reasons for voting in favour of this amendment. But in the first place I wish to associate myself with the expressions of regret and protest which have been given utterance to in this Council at the birth of the new form of taxation which will come into existence on the passing of this measure; and all the more so as the forms of taxation already in existence were intended in the main to provide for necessities of the kind which it is in contemplation to meet by this Bill. But I take it that it is too late to enter with profit into any discussion of that kind at the stage which the Bill has now

reached. Leaving that question aside, I submit that there is a great deal to commend, if not the exact form of the amendment, at any rate the principle which underlies it.

"It has been pointed out, and it has not been denied, that the object of the Bill is to benefit in the matter of health and sanitation all the residents of certain areas which may be brought under its operation. Therefore it is only right and equitable that every one to the extent of his means, and so far as may be practicable and reasonable, should bear the burden of the taxation rendered necessary for such purpose. We all know that it is not a particularly agreeable feeling which one entertains when one is subjected to the pressure of a new tax, to the operation of a 'new scheme of drainage' on the purse; and that feeling will not be improved if it is found that others who enjoy the benefit will be exempt from the necessity of paying for it. As a matter of fact there is in connection with this Bill that feeling, that sense of unfair treatment and irritation, amongst the representatives of the landed interest. And in a question of this description I think from considerations of justice and fairness, and also, I venture to appeal to the Council, from considerations of political wisdom and expediency, it is desirable, if it can be done, to remove that feeling of unfairness and to allay that sense of irritation. Only yesterday I received a letter from one of the most honoured representatives of the zamindari interest —unfortunately I have not brought that letter with me—stating that the feeling is growing among landholders that whenever there is any reform to be carried out which would confer benefit, real or fancied, on the community generally, those connected with the land are singled out for taxation, because the machinery for subjecting them to that operation is ready at hand.

"Though speaking generally, and in the main, it may be truly said that in the rural areas those engaged in trade are also interested in land, yet there are exceptions, and marked exceptions, to the rule. I myself know of tracts in which there are flourishing marts or bazars containing a large number of well-to-do members of the trading and mercantile classes, foreigners to the district and having no interest in any land in or about the locality, who would be exempted from the operation of the Bill, if those places happened to be within the affected area.

"But the objection which has been taken is not to the principle of the amendment, which is admitted to be just and fair, but to its being impracticable

in working. I need hardly say I feel highly honoured by the reference to my previous statement in connection with the Chaukidari Bill; but in the present case there are two or three considerations of an important character which I beg leave to point out, and which distinguish this scheme from the case then under consideration. In the first place there is an important question of principle involved in the present case which did not then exist. And I may observe that as regards the imperfections of the mechanism proposed, I am confident the Select Committee, should the matter be referred back to them, will be able to find a practical means by which justice to all classes will be secured, and the incidence of taxation will be made co-extensive with the necessities of the situation. Proceeding further, not only is the principle one which requires taxation of a somewhat more extensive kind than that contemplated in the Bill, but in the second place there is ample and unfettered discretion left in the hands of members of the District Board as to the particular form of taxation to be adopted in any individual case, having regard to the actual facts or requirements of that case. I submit that will make a very important difference in the character of the measure, considering that the members of the District Board will be representatives of the inhabitants of the district. Even if there be any fear of difficulty in the working of some of the alternative schemes, any feeling of that kind will be more than counterbalanced by the advantage to be derived from a strict adherance to fairness and justice, and the remedy as regards such difficulty will be in the hands of the Board. They will be most qualified to determine whether such fears in any case are real, and they will further have the means ready at hand to remedy that defect by adopting the scheme now contained in the Bill, and which will, of course, be retained. If on the other hand no attempt to apply any of the alternative schemes is made by any District Board, those who represent the raiyats and zamindars will have no ground to complain, a sense of injustice will not be rankling in their minds, because they will find that although the legislature had armed the District Boards with the power of extending taxation, the practical difficulties in the way made that extension extremely undesirable. And in the third place, as regards the feasibility of working the alternative schemes (*b*) and (*c*), if indeed it be, as pointed out by the hon'ble member in charge of the Bill, that provisions of this kind would be practically a tax on incomes, I would observe that just as there is at present the road cess procedure for realising the tax now in contemplation, in the same way there is,

fortunately or unfortunately, a very extensive machinery for the working of the income tax. Here also it may be feasible to combine one machinery with the other.

"On these grounds, I submit that having regard to the importance of the principle involved and of giving every legitimate relief to the landed interest, all that can be done to meet their just grievances in a matter of this kind should be done. In giving my vote in favour of the amendment, I will only add one observation. I do not identify myself with any remarks which have been made in favour of a practical addition to what is now known as the chaukidari tax being accepted as a substitute for the road cess. Having some acquaintance with villages in the mufassal, I am bound to say that in my experience among the poor agricultural classes there is not unfrequently a great deal of hardship in the realisation of that tax, and I should be very reluctant to support this amendment if I thought it would bring about an addition to the chaukidari tax. I was going to say it would be a calamity to add any taxation to what is already borne by those who are living on the smallest of earnings and the scantiest of means. But believing as I do that the District Boards might so work the matter as to deprive the operation of the optional clauses, the alternative schemes of taxation, of any semblance of injustice or hardship to the poor, having their own experience and local feeling to guide them; believing that considerations of strict fairness to all classes should not be altogether lost sight of in searching for smoothness and ease of machinery; and without associating myself with all the details of the amendment—I shall yet vote for it, should it be pressed to a division, as a protest against the laying of fresh burdens on only one class, the raiyat and the landlord, for the conferring of benefits which will be shared by not them alone."

The Hon'ble Mr. RISLEY said:—"I have only two or three words to add to the ample, and I venture to think effective, criticisms which have been passed on this amendment, and those two or three points have not been fully dealt with in the speeches which we have heard so far. In the first place, I understand, we are dealing wholly with a question of mechanism and not with the question of principle. The principle is admitted that a tax upon the land is proposed, and not a tax upon the incomes of the people. The only point is what is the best means of giving effect to that tax. We have the choice of two machineries or perhaps three, one of which, the machinery of the road

cess, is unquestionably a good machinery, and it is proposed besides this machinery, which I am inclined to think the best, to give the District Board the use of two alternative kinds of machinery. One of these is the annual value tax which has not been referred to in the debate and which will hardly be possible in any rural area: it has been found impracticable in small municipalities, and it will therefore be quite unworkable in rural areas. Therefore the only alternative which really remains is the tax according to the circumstances and property of the person to be taxed. That tax has a tolerably ancient history. I believe it has existed from the time of the Chaukidari Tax of 1856, and I am not sure that it does not go back to an older Regulation of 1819, which introduced the Chaukidari Tax on a small scale for, I think, the municipalities of Dacca, Berhampore, Calcutta, and Cuttack. The Chaukidari Tax from the very commencement always had a maximum limit, and anybody who examines the matter can satisfy himself that that is the principle upon which the tax is based. In all the discussions, the discussions on the Municipal Bills of 1856 and of 1864 and of later years, it has always been recognised that the tax itself is a sort of rough-and-ready means of taxation, and is only to be accepted as a *pis-aller*, because you cannot put anything else in its place. What made the tax tolerable was this maximum limit, but it is not clear to me from the terms of the amendment whether the hon'ble member proposes to make his alternative scheme subject to a maximum or not. If he proceeds here on the lines of a circumstance and property tax, then practically he is bound to provide some maximum limit. The new Chaukidari Act, VI of 1870, fixes a maximum of one rupee a month. Either the amendment proposes ultimately to take cognizance of this, or it does not. If it does, the principle of proportional benefit which forms the principle of this Bill is clearly thrown out. Under the road cess procedure everybody pays strictly in proportion to the land he holds, but if you proceed on the basis of the Chaukidari Tax, everybody's liability will cease when the maximum limit of one rupee is reached, and then there will be a substantial difficulty in levying the amount required, and in no case will people pay in proportion to their income or the amount of land they hold. The tax will be absolutely inequitable all through.

"Then there is the second point. It is alleged that the proposal to assess the tax according to circumstances and property is intended to lay the burden on classes who under the Bill would escape from taxation. I submit that it is

extremely doubtful whether that statement can be made out. The assumption is that in rural areas there are large numbers of people who have no interests in land, and who will therefore escape a machinery which adjusts the tax according to interest in land. I use the figures prepared in connection with the cadastral survey of Muzaffarpur, which show that in an area of three thousand square miles there is a population of 2,711,000. We may assume half of these to be females; there remains 1,355,000. We may further assume that one-third of these are children. We are then left with a total number of 900,000, and of these no less than 200,000 are proprietors and shareholders in land. The number of tenures is one million. The excess of tenures over population is due to the fact that a certain number of people hold more than one tenure. But even these figures do not exhaust the subject; they make no mention of mortgagees of property and of tenant rights, all of whom, I understand, are to be numbered as having interests in land. So that in this Muzaffarpur area everybody, except the small class of labourers, has some interest in land, and certainly it would not be proposed to assess them. I shall give another instance. It is a statement in connection with a pargana in the Tippera district, from which it appears that no less than 94 per cent. of the population are agriculturists. Further, I find a statement in a very admirable report by Munshi Nandji. It is a statement in connection with pargana Mallarpur in Birbhum, which gives statistics of the population classified according to professions who also hold cultivable lands. They are merchants, oil-pressers, oil-sellers, potters, blacksmiths and coolies. I have no doubt that further statistics which may be prepared in connection with these statements will absolutely demonstrate this point. And further, it is a matter of experience in this country, as in other countries, that the trading classes, directly they have made money, the first thing they do is to acquire rights in land. They take mortgages of rights either as middlemen or as landholders, and it is absolutely beyond doubt that the whole of these people will be assessed under the road-cess machinery and will be rightly so assessed, and therefore there is no necessity for introducing any alternative form of taxation whatever.

The Hon'ble SIR GRIFFITH EVANS said:—"I wish to say a very few words, particularly on the question of the machinery for the assessment of the proposed alternative system of taxation: I should rather say the entire absence of any machinery for this alternative proposal. I am not going to discuss the question

whether equitably all property of all kinds should not contribute equally in a proper scheme of taxation for local improvements. That is a question which has been much discussed in England, but the practical difficulties have never been overcome. What we have to do now is to vote on a certain amendment, namely, that District Boards should be able to recommend certain alternative forms of raising this money, and on their making that recommendation the Collector should make certain estimates, and then there follow amendments which purport to indicate the way of carrying out such recommendations. The proposal is simple no doubt to a degree, and the only objection is that it is too simple, and that it provides no machinery at all for working it out. The proposal is to have a tax on persons in the local area according to the circumstances and the property of each person. How is the tax to be levied? My hon'ble friend, MR. ANUNDO MOHUN BOSE, who has backed up the adoption of this amendment, has himself said that it would be perfectly out of the question to utilise the agency for the assessment of the chaukidari tax for the purpose of levying this taxation. Obviously it is so. Then what is the other scheme? It is the machinery employed by mufassal municipalities. It is a most elaborate machinery. It provides that there should be an assessment list as regards the property and the circumstances of individuals, and a valuation list as regards the rateable value of holdings. These assessment and valuation lists are to be published; there is a machinery for appeals of an elaborate character, and a proviso for a maximum of eighty-four rupees. But these provisions are not incorporated in the Bill or in the amendment, and would not work if they were so incorporated. In the present case, we are simply told that the District Board is to recommend a principle of assessment, and that the Collector is to make out an estimate. It has been pointed out that it will be impossible for the Collector to do so, as he has no agency for the purpose. But suppose he does make an estimate, then by section 24A, if the District Board has decided to raise the cost of carrying out a drainage scheme by means of a tax on persons or on the annual value of holdings within a local area as provided by section 15A, they would require the Collector to assess persons occupying holdings within that local area according to their circumstances and property, or by a rate upon the annual value of holdings within such area, and then the assessment is to be made either through a paid assessor or by means of the village punchayats or through any other agency the Collector may think fit to

comply. That section gives no idea of the way in which objections are to be dealt with, on the assessment made, nor does it prescribe a limit or any proportion between the supposed income and the amount to be levied as a tax, or provide any means of valuing mufassal holdings or limit the percentage to be paid on the value. It is left entirely for the Collector to do what he pleases. I do not know what is meant by such a section. I assume it to mean that persons are to be assessed at whatever the Collector fixes, and thereupon this tax—I cannot discover when or on what action by the Collector it becomes payable—is to be recoverable as a public demand. It has been said that the Select Committee will be able to find the means of carrying out this principle of taxation. The question before the Council is not to refer the Bill back to the Select Committee and ask them to give effect to certain principles, but whether we should adopt the amendment now before us, which to my mind it is impossible to do with any regard for our reputation as an assembly of practical men."

The Hon'ble MR. BOURDILLON said:—"It appears to me that the general merits and demerits of the proposal before the Council have already been sufficiently discussed, and I have no desire to add another stone to that heap: I only wish to refer to one point which has not been noticed by any of the speakers who have preceded me. The hon'ble mover of the amendment has told us more than once that he bases his amendment upon the broad principle that all who benefit by an improvement under this Bill should be equally taxed. But if I read his amendment rightly, it seems to me to carry its own condemnation with it, and to be so worded as exactly to frustrate the hon'ble member's intention. It proposes that the tax shall be an assessment upon persons occupying holdings, but the bill nowhere defines a 'holding,' and the hon'ble member has omitted to provide any definition of the term. We must therefore turn to some other place for a definition, and as we are talking of rural areas, the natural reference is to the Road Cess Act, which has to a great extent been made the basis of the Bill before the Council. In that Act (section 4) 'holding' means the land held by a cultivating raiyat. If that definition is accepted in default of any other, the practical result would be that the tax will be levied from none but cultivating raiyats within the local area, whereas the intention of the amendment is to levy it from all alike."

[*Babu Surendranath Banerjee.*]

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I have a few observations to offer in reply to the remarks which have been made on my amendment. The chief objection is, firstly, one of principle and, secondly, as regards the practical machinery for the purpose of carrying out the objects of the amendment. It has been observed by more than one speaker that my proposals involve a rough kind of income-tax. It is undoubtedly a rough kind of income-tax that I propose, but that ought to be no objection to them. It is somewhat late in the day to urge any objection of that kind, having regard to the fact that the bulk of the taxation in the mufassal is a rough kind of income-tax. The chaukidari tax, the tax levied in a large number of mufassal municipalities, are all so many forms of income-tax. Not only that, but it seems to me that by accepting this kind of taxation you move along the line of least resistance. As the hon'ble MR. RISLEY has remarked, the people of Bengal have been accustomed to the chaukidari tax since the year 1819, and to the municipal tax according to the circumstances and property for a long time; therefore they are familiar with this tax, and those who have to levy it are also familiar with it. Consequently, as far as the question of principle is concerned, my scheme is not open to any objection, as it enables us to move along lines to which the people have long been accustomed. But we have been treated by the learned Advocate-General to a criticism upon the defects of the machinery for the imposition and realization of the tax. It strikes me that if the Government accepts this amendment, there ought to be no real difficulty in the way of framing a suitable machinery for the purpose of carrying it out. It is provided in section 24A, which I propose to move as an amendment later on. The tax may be assessed and collected either by the income-tax assessor or by any other assessor the Collector may appoint, or by means of any other agency the Collector may consider desirable. Then under Chapter II the Government is vested with the power to frame rules generally for carrying out the provisions of this Act. Surely, if the principle of the amendment is accepted, there ought to be no difficulty in the way of framing rules to give effect to it. I take my stand on the high ground of principle. You are going to enact a law which is admitted to be unpopular; why handicap it with a system of taxation which is likely to cause a great deal of dissatisfaction? The zamindars will complain, the raiyats will complain. They will say, here is a benefit to be shared by the community at large, but why should we

alone be taxed for it? I do not think the Government should face difficulties of that kind when my amendment provides a means of escape. I propose alternative schemes, and if some of them are found impracticable, the District Boards will not accept them. Why do you object to them? The mere fact of their being on the statute-book will testify to the anxiety of the Government to avoid an unfair and inequitable system of taxation. I have not the slightest doubt in my mind that by accepting these alternative systems of taxation the Government will have taken a very long step towards conciliating public opinion."

His Honour the President said:—"I had hoped that the hon'ble mover of the amendment in winding up the debate would have told us that while still unconvinced as to the principle involved, he was prepared to withdraw his amendment in view of the fact that the majority of the Council is decidedly against it, and that a blow has been struck at his armour which has made serious dents in it, and which, to a great extent, destroys the effective power of that armour. I should like in the first place to say that though the hon'ble member, in proposing his amendment, began with expressing a fear lest that he should be considered obstructive, neither I myself, nor I think any officer attached to the Government, is inclined to think that the hon'ble member has been obstructive in the way in which he has treated this Bill, either in the Council or in the Select Committee. On the contrary, I wish to say that we owe a great deal to him in respect of the origin of this Bill, of the improvements which have been made in it during its incubation, and of the way it has been received by the country at large. And though I cannot accept this amendment, I am not the less grateful and glad to acknowledge the great help the hon'ble member has rendered in preparing the Bill and supporting its main principles.

"As regards this amendment, I admit that the object is wholly laudable. From the beginning we have sought for some other way of imposing a rate than on landed interests only, and if we could have found a way of taxing people who will benefit by these drainage schemes, and who do not come within the scope of the rate which has been adopted, we should have been glad to accept it. We have searched high and low, but we have not been able to find it. I think that the object of the amendment is a right and a sound one, and if it had been a practicable measure, I would accept it with great satisfaction. But the main difficulty in our way from the time when the first

draft of this Bill was brought out is the practical difficulty of the introduction of a new system of taxation; how we should assess, how we should value, how we should bring notices home to the people, how we should treat the objections which people might make, and how we should provide for appeals after objections had been made and had been overruled. That weighed upon me very much, and it was with a great deal of relief that I received a suggestion from Mr. Duke, the Collector of Hooghly, who has had great experience in working the Agricultural Drainage Act, and whose assistance has been invaluable in framing the provisions of the Sanitary Drainage Bill. It is his proposal which we have adopted in making use of a machinery which exists and which is working fairly well, namely, the machinery of the Road Cess Act. It would be a most retrograde step now to leave this machinery which exists and to go to a new machinery, which we should have to create, and I am sure no practical man, who has thought over the difficulties which lie in the way of this Bill as I have done, would dream of going back from a machinery which is existing and which we can adopt, to propose a new machinery which has to be worked out.

"The idea of utilising the machinery of the Chaukidari Act has not been supported by a single member, except the hon'ble member himself, and that not very strongly. The idea of utilising the machinery of the Income-tax Act has hardly been discussed, and I will dismiss it with the simple remark that I am satisfied that the Government of India would not sanction our utilising a machinery which is for the collection of an Imperial tax in order to tack on to it a small provincial tax. They would say that they require the free power of dealing with the income-tax as the sheet-anchor of Imperial finance. They may, at any time, desire to raise the percentage at which the income-tax is now collected, and it would be fatal to their own financial position if, at the same time as they had to enhance their own assessments, a small provincial leech is attached to it which would suck at the same source and deprive them of part of the extra amount which they wish to raise.

"I therefore hope the Council will agree with me that neither the machinery of the chaukidari-tax nor of the income-tax can be applied to the object of taxation under this Bill, and that the idea of inventing new machinery for it is not to be tolerated. And even if it were to be tolerated, as the learned Advocate-General and other hon'ble members have pointed out, we have not

the details of the machinery placed before us. As Mr. Risley has pointed out, the amendment will not achieve the end aimed at by the hon'ble member, but the very reverse. To pass this amendment would be to wreck the Bill. It would be necessary to send the Bill back to the Select Committee to consider this and the subsequent amendments bearing upon it so as to see how they could be worked. The Council could not pass the Bill in the state in which it would stand if this amendment were passed. Therefore on all grounds, both theoretical and practical, I think that this amendment must be resisted, and I should wish, for the sake of the unanimity of the Council in carrying this Bill through, that the hon'ble member would see how desirable it is that we should have a unanimous vote on this important subject."

The amendment was by leave withdrawn.

The Hon'ble MR. LYALL moved that the following words be added to section 2—

'The words 'cultivating raiyat,' 'estate,' 'holder of an estate,' and 'tenure' shall have the meanings attached to them in the Road Cess Act, IX (B.C.) of 1880.'

He said—"The reason for asking leave to add these definitions is this. At one time when the Bill was in Select Committee, it was decided that the cess to be raised under this Act should be levied under the machinery of the Road Cess Act; some objection was raised, and finally sections 23 and 24 were inserted in the Bill. These definitions existed in the early draft of the Bill, but were omitted subsequently, and it was only yesterday pointed out to me by my hon'ble friend, MR. R. C. DUTT, that it would be advisable to insert these definitions. The Advocate-General was consulted, and he agreed that their insertion is necessary."

The motion was put and agreed to.

The Hon'ble MR. LYALL moved the following amendment in section 9—that in place of the words "at a special meeting" at the end of the section, the following be substituted—"at a meeting specially called for the purpose."

He said:—"When the Select Committee were drafting the Bill, they failed to note that in the present Local Self-Government Act there is no provision for a special meeting of the District Board. The object to be attained is exactly the same. Instead of 'a special meeting,' we propose that the District Board shall

take the preliminary scheme into consideration at a meeting to be called for the purpose. The words 'special meeting' had a particular meaning in the old District Board Act, but they have been entirely omitted in the Local Self-Government Act. The amendment therefore stands thus, that in section 9 the last words 'at a special meeting' be struck out and the words "at a meeting specially called for the purpose" be substituted for them; and that in the first line of section 11 the word "special" be struck out."

The motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that for the first sentence in section 11, the following be substituted:—

'If at a meeting specially called for the purpose, a majority of the members present, acting on the advice of the Commissioners, or with the approval of a majority of not less than two-thirds of such members (such meeting to consist of not less than two-thirds of the total number of members of the Board) acting against the advice of the Commissioners, adopt the preliminary scheme, they shall revise it in the following manner.'

He said:—"This section deals with the procedure which the District Board has to follow when it has to consider the report of the Drainage Commissioners. The report is to be considered at a meeting to be specially convened for the purpose. If the report is adopted by the District Board, it will be adopted by a majority, but if the report is rejected, a further safeguard is provided. It must be rejected by a majority of two-thirds of the members present. I have not the smallest objection to a majority of the meeting adopting any scheme on the advice of the Drainage Commissioners, but I contend that when the report is rejected it should be rejected at a very full meeting of the District Board; and therefore I beg to submit for the consideration of the Council that the decision of the Drainage Commissioners should not be rejected except at a meeting where at least two-thirds of the entire number of members of the District Board are present. My amendment is in the nature of a compromise. In the Bill first revised by the Select Committee, the section provided that if the scheme of the Drainage Commissioners was to be rejected, it should be rejected at a meeting of two-thirds of the total number of the District Board. When I called attention in Select Committee to section 10 of the Bill as revised by the first Select Committee, which laid down the provision to which I have just referred, I was met with the remark that it would be impracticable, that you would never get two-thirds of the whole number of the District Board

to be present at a meeting. However that may be, my present proposal cannot be regarded as impracticable, for it is supported by the high authority of a Magistrate of the district, who is also Chairman of the District Board. The Magistrate of Faridpur, writes:—'I should prefer a majority of two-thirds of the members present at a meeting specially convened for the purpose of considering the scheme, such meeting to consist of not less than two-thirds of the total number of members of the Board.

"We may be sure that a District Magistrate would not make a recommendation of this kind unless it involved a perfectly feasible proposal."

The Hon'ble MR. LYALL said :—"I cannot recommend the Council to accept the present motion. The question was very fully considered by the Select Committee, and the reason which induced them to make the recommendation is that the District Boards are large bodies, consisting of men residing in all parts of the district, and it is almost impossible for them all, or even a large majority, to attend meetings. From the statistics I find that the number of members who attended meetings in the year 1893-94 was only 46·9 of the total number. You cannot expect attendance at meetings in the mufassal such as you expect in municipalities and other bodies where the members live close to each other. Taking these facts into consideration, the Select Committee were of opinion that the wording of the Bill is sufficient, but I am quite willing, if the hon'ble member will reduce the number to one-half, to accept the amendment."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"If that is the sense of the Council, I shall be glad to get a minimum of one-half of the members of the District Board if I cannot get two-thirds."

The amendment was then put in the following amended form, and the motion was agreed to :—

'If at a meeting specially called for the purpose, a majority of the members present, acting on the advice of the Commissioners, or with the approval of a majority of not less than two-thirds of such members (such meeting to consist of not less than one-half of the total number of the members of the Board) acting against the advice of the Commissioners, adopt the preliminery scheme, they shall revise it in the following manner.'

[*Babu Surendranath Banerjee; Mr. Lyall; Mr. Dutt.*]

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following proviso be added to section 14:—

'Provided that it shall always be obligatory on the Local Government to contribute a fixed proportion, to be determined by the Local Government, of the cost incurred in carrying out such scheme.'

He said—"As I read section 14, it is optional with the Government to contribute to the construction of any drainage project or not, just as it pleases. I take it that, having regard to the great interest which the present Lieutenant-Governor has taken in this Bill—and I am sure that it is an interest which will be perpetuated by his successors in office—such contributions will be frequently made, and in the vast majority of cases will be generously made. Therefore I think it would be wise on the part of the Government to recognise this duty as a statutory obligation. It would act as an incentive to the District Boards to initiate such schemes. It would act as a stimulus to generous and philanthropic individuals who would emulate the generosity of the Government. Further, if Government contributes it will take care to see that no bogus schemes are started, and that the money is well-spent. I have heard the remark made that the Government may nullify the provision by contributing very little, but I have abundant confidence in the generosity of the Government in this matter. I hope that under these circumstances the Government will make the concession I ask for, and that it will recognise its duty to make such contributions as a statutory obligation."

The Hon'ble MR. LYALL said:—"I do not wish to take up the time of the Council by saying anything further than that this amendment cannot be accepted by the Government."

The Hon'ble MR. R. C. DUTT said:—"I think this amendment, if it were accepted, would be entirely futile. On the one hand, the Bill confers upon the Government the power of accepting or rejecting a scheme. That being so, if we lay it down, at the same time, that the Government in accepting a scheme shall always contribute a certain proportion of the cost, it may come to this that where the Government is prepared to contribute one-fourth of the cost of a particular scheme which it approves, and the Legislature has fixed the proportion of one-third, the Government may be induced for that reason to reject the scheme. On the other hand, there may be schemes which the Government may consider so important that it may desire to contribute more than the proportion

laid down in the Act, and in such cases the amendment would have the effect of restricting the generosity of the Government, which I am sure my hon'ble friend does not intend. I have just now before me a scheme of this nature which has been laid before the Government. It is a scheme for opening out the Kausiki khal in Hooghly. The northern part of the khal is now silted up, and is mostly cultivated to the extent of two or three miles; the rest of the channel is absolutely stagnant, and the water in it is never renewed. There are about fifty villages situated in that area, the whole of which suffer from the effects of malaria, and in recent years they have suffered from cholera also. There were at least two hundred deaths from this disease last year. A scheme was prepared for sending a current of fresh water into this khal from the Kana Nadi, so as to benefit all the villages on its banks, and restore it as a water course. It was proposed to provide a sluice gate at the lower end by which the water could be let out into the Rajapur Bil; and having thus opened out both ends of the khal, it was proposed to get as much water into it as can be spared from the Kana Nadi, which may be about four or five flushes during the year. It took some time to mature the scheme, and I had the greatest pleasure, as acting Commissioner of Burdwan, to forward it to the Government for favourable consideration. A few months ago I received a reply from the Government, in which they stated that the scheme would be carried out in the Irrigation Department, provided that half the estimated cost of the work was contributed by the District Board. Therefore, if we accept this amendment and fix the proportion to be contributed by the Government, which would probably not be more than one-fourth or one-third, it may have the effect of restricting the contribution to something less than what the Government may otherwise be willing to give."

The Hon'ble BABU SURENDRANATH BANERJEE, said:—"My hon'ble friend MR. R. C. DUTT labours under some misapprehension. According to the terms of my amendment there is to be no hard and fast rule of proportion which is to govern all cases. The proportion of the contribution to be made by Government will vary in each case, and will be determined by the Government itself, having regard to all the circumstances of the case. There will be nothing to prevent the Government from paying one-half of the cost in any case in which it may think fit to do so. All that I want is that the Government should recognize by law that it is bound to make a contribution."

The Hon'ble MR. RISLEY, said:—"In that case I should like to enquire how the proposal, as it has just been explained, differs from that which is already comprised in section 14, which provides that the Local Government shall consider the scheme, and 'if it approve or modify the scheme, it shall thereupon return it so approved or modified to the District Board through the Commissioner of the Division, with an intimation of the amount which the Local Government will contribute towards the scheme.' I conclude that the amount so contributed will bear some proportion to the cost to be incurred in carrying out the scheme."

The Hon'ble BABU SURENDRANATH BANERJEE observed:—"If it is understood that the liability of the Government to contribute is recognised in the Bill, I withdraw this amendment."

The Hon'ble SIR GRIFFITH EVANS said:—"I do not think the Government was bound by section 14 to make any contribution. It ordinarily would do so no doubt, but there is no statutory obligation, and I do not see why there should be a statutory obligation."

HIS HONOUR THE PRESIDENT said:—"I think the answer to the hon'ble member's amendment is that it does create a statutory obligation on the Government to contribute to the cost of an approved scheme, which section 14 as it stands in the Bill does not create. But the statutory obligation would be satisfied by the Government contributing a single rupee, and therefore it would have no practical effect. Under these circumstances, perhaps, the hon'ble member will withdraw the amendment."

The amendment was by leave withdrawn.

The Hon'ble BABU SURENDRANATH BANERJEE moved that for sections 23 and 24, the following be substituted:—

'Every holder of an estate or tenure liable to pay the rate under section 22 shall pay to the Collector half the rate due in respect of such estate or tenure, the other half being paid to the Collector, or any other officer who may be appointed in this behalf, by the cultivating raiyats holding lands within the local area, the amount due from holders of estates and tenures and cultivating raiyats being recoverable under the law for the time being in force for the recovery of public demands.'

He said:—"Under the Bill as it is, the whole of the drainage cess will be recovered from the owner of the estate or tenure, and he will have

to recover half the amount from the cultivating raiyat. The object of my amendment is to make each person responsible for his own dues. The zamindar will pay his share of the cess, and will not be held responsible for the dues of the cultivating raiyats which he is not always able to realise, and at the same time the raiyat will be protected against the exactions of an unscrupulous zamindar, who may take more than he is entitled to do. This is the principle which has been adopted in the most recent enactment which has been passed by this Council. Sections 30 and 31 of the Record of Rights Act, provide as follows:—

Payment of expenses by proprietors.

'30. The amount due from proprietors shall be paid together with such instalment of land revenue as the Local Government may direct, and arrears shall be recoverable under the law for the time being in force for the recovery of public demands.

Payment of expenses by tenants and rent-free owners and occupiers.

'31. The amount due from tenants and rent-free owners and occupiers shall, subject to any orders passed by the Local Government under section 28, be paid by them to the Settlement Officer, on tender of such extract from the record of rights as they may be entitled to receive. Arrears shall be recoverable under the law for the time being in force for the recovery of public demands.'

"This is what we have done in connection with the most recent piece of legislation which has passed through this Council, and I beg that the same principle may be adopted in this Bill. It is a new law which we are enacting, and it will be an unpopular law, and it strikes me that zamindars and raiyats will be partly conciliated if the principle for which I contend is accepted. The British Indian Association have made a representation on this point; they complain of the principle contained in this section, and they have recorded a strong protest against it."

The Hon'ble MR. LYALL said:—"I am compelled to ask the Council to reject this amendment. The hon'ble member says it is on the lines of the latest legislation, but the latest legislation has nothing to do with the subject before us now. The object of the Select Committee was that the rate should be collected in the easiest way by the existing machinery of the road cess, but the hon'ble member wants us to create an entirely new machinery in the Collector's office to realise the rate from all cultivating raiyats. That would be an expensive machinery, and I venture to doubt whether the raiyats would

[Mr. Lyall; Mr. Bose; Rai Eshan Chunder Mittra Bahadur; Babu Surendranath Banerjee; the President.]

prefer it. I do not think they would object so much to pay an anna or so more than their existing road cess as to a number of peons being let loose with certificates all over the country for the collection of these petty sums. The sums realisable under this Act will be exceedingly small, and a large number of peons with certificates in their hands would have to be sent out for the collection of very small amounts. I venture to think that the poor raiyats would have to pay a great deal more under the proposal of the hon'ble member than under the procedure prescribed by the Select Committee. I cannot therefore recommend the Council to accept this amendment."

The Hon'ble MR. A. M. BOSE, said:—"While sympathising to a great extent with the object which the hon'ble member for the Corporation has in view, I will point out that this amendment can hardly be placed before the Council, or considered by it, until section 22 of the Bill is amended. That section provides that 'the rate so determined shall be published as provided in section 40, Bengal Act IX of 1880, and shall be paid together with the road cess payable by those liable to pay such cess;' therefore that section lays it down that the whole of the rate under this Bill shall be paid in the first instance by the persons who are liable to pay the road cess. If we leave that section intact, and my hon'ble friend does not propose to alter it, it will not be possible to accept this amendment."

The Hon'ble RAI ESHAN CHUNDER MITTRA BAHADUR said:—"I do not know whether the proposal of the hon'ble member would be advantageous in any way. I think it would be more convenient if the zamindars and tenure-holders were called upon to pay the rate and realise their quota from the raiyats."

The Hon'ble BABU SURENDRANATH BANERJEE asked leave to withdraw the amendment.

HIS HONOUR THE PRESIDENT said:—"Before allowing the amendment to be withdrawn, I desire to explain the reason why an important distinction exists between the case before us now, and the case to which the hon'ble mover of the amendment referred in the Record of Rights Act. It has rather a curious history. When Sir Antony MacDonnell was acting for me, the question came before him first of all, and he contemplated that their share of the cost of

[*The President; Babu Surendranath Banerjee.*]

he settlement operations should be paid by the raiyats, not once for all, but through a number of successive years, and he therefore thought the cost should be collected in the way in which the road cess is collected; but when I came to consider the matter, I found that the amount would be so small that it would be better not to collect it, by instalments, with the road cess, which might give the impression that it was to be more or less a permanent imposition, but to collect it once for all from the raiyats. If you want to collect a due once for all, you should collect it directly from the person from whom it is due, but if you are going to collect an amount year after year by all means collect it by a machinery which exists for the collection of an annual rate or cess."

The motion was by leave withdrawn.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following proviso be added to section 22:—

'Provided that if the Collector or other officer shall so direct, a notice under this Act may be sent by post in a letter addressed to the person named therein at his last known residence, address, or place of business, and registered under Part III of the Indian Post Office Act of 1866, or any similar enactment for the time being in force, and service of it may be proved by the production of the addressee's receipt.'

He said—"Section 40 of the Road Cess Act does not make any provision for personal service by post. In the Bill as revised by the first Select Committee we had a section precisely the same as that which I now propose. It was a proviso to section 34 of that Bill, and it laid down that if the Collector or other officer should so direct, a notice should be sent by post in a registered cover. The proviso which I now submit for the acceptance of the Council does not impose any duty on the Collector, except such as he may take upon himself in the exercise of his discretion. It is entirely a matter of discretion whether he should serve a personal notice of this description, and I do not see any possible objection to the acceptance of a proviso like this. There may be cases of hardship in which the Collector may be convinced that service of personal notice is necessary. What possible objection can there be to his serving personal notice in such cases? It is not an obligation imposed upon the Collector, but we give him a discretion, and he may be trusted to use his discretion in a manner which will not encumber him with unnecessary work."

The Hon'ble MR. LYALL said:—"There is no possible objection to this amendment, except that it already exists in the law, and to insert this proviso would be to enact the same provision twice. Section 22 of the Bill provides for the service of notice in the manner provided by section 40 of Bengal Act IX of 1880, and in section 96, clause (2) of that Act, it is enacted that the notice may be served 'by sending a registered letter containing such notice directed to the said person at his usual place of abode or to the place where he may be known to reside,' and that makes exactly the same provision which the hon'ble member desires. The provision exists in the law, and is therefore unnecessary."

The Hon'ble MR. R. C. DUTT said:—"The reason why this provision occurred in the Bill as before amended by the Select Committee was that it was then intended to realise this cess as a separate tax. It is now provided in section 24 that it is to be levied with the road cess, and it will be a rate proportionate to the road cess. The provisions of the Road Cess Act have therefore been made applicable to the recovery of sums due under this Act. Practically what the hon'ble mover of the amendment wants is provided for."

The amendment was by leave withdrawn.

The Hon'ble MR. LYALL moved that the following clause be substituted for clause (2) of section 35:—

(2) "The Local Government shall, before making, altering or repealing rules under this section, publish a draft of the proposed rules, alterations and repeals in three consecutive numbers of the *Calcutta Gazette*, and shall specify a date not less than one month from the date of publication at or after which such draft will be taken into consideration.

(3) The Local Government shall receive and consider any objection or suggestion which may be made by any person with respect to such draft before the date so specified.

(4) Every rule so made or altered and every repeal of any such rule under this section shall be thereafter published in the *Calcutta Gazette*."

He said:—"This clause has been redrafted by the Secretary. It is more full than the clause which the Select Committee drafted, and it is in accordance with the procedure prescribed by the General Clauses Act."

[*The President; Mr. Cotton.*]

HIS HONOUR THE PRESIDENT said:—"As this amendment is upon a question of wording, and has not been considered as carefully as is desirable, it will perhaps be better to defer the consideration of it to the next meeting of the Council. Although we have disposed of all the amendments proposed to this Bill, I shall recommend to the Council that we should not pass the Bill on this occasion, but should defer it to the last meeting of the Council, which will probably be held on this day fortnight. It often happens in regard to Bills of this kind that suggestions are made at a later date, corrections and improvements are proposed, and it is always well to have a *locus penitentiæ* in a matter of this kind. Another reason for deferring the final passing of the Bill is that we leave an opportunity for two mufassal members of the Council who have not yet been elected to give us the benefit of their experience in the matter. There have been delays in the election of the representative members of the Bhagalpur and Dacca Divisions, but we hope by this day fortnight to see those members among us; therefore I propose that the final passing of this Bill be deferred till the last meeting of the Council."

THE CALCUTTA ELECTRIC LIGHTING BILL.

The Hon'ble MR. COTTON presented the Report of the Select Committee on the Bill to facilitate and regulate the supply of electricity for lighting and other purposes in Calcutta.

The Council adjourned to Saturday, the 27th July, 1895.

CALCUTTA;
The 15th August, 1895.

C. E. GREY,
Offg. Assistant Secretary to the Govt. of Bengal,
Legislative Department.

Reg. No. 472G—300—16-8-95.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 *and* 1892.

The Council met at the Council Chamber on Saturday, the 27th July, 1895.

Present:

The Hon'ble Sir Charles Alfred Elliott, K.C.S.I., Lieutenant-Governor of Bengal, *presiding*.
The Hon'ble H. J. S. Cotton, C.S.I.
The Hon'ble D. R. Lyall, C.S.I.
The Hon'ble J. A. Bourdillon.
The Hon'ble C. E. Buckland, C.I.E.
The Hon'ble H. H. Risley, C.I.E.
The Hon'ble R. C. Dutt, C.I.E.
The Hon'ble Rai Durga Gati Banerjea Bahadur, C.I.E.
The Hon'ble Surendranath Banerjee.
The Hon'ble Maharaja Jagadindra Nath Roy of Nator.
The Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.
The Hon'ble C. E. Smyth.
The Hon'ble A. M. Bose.
The Hon'ble Rai Eshan Chunder Mittra Bahadur.

THE OFFICIAL SECRETS ACT.

The Hon'ble Babu Surendranath Banerjee asked—

Is there any truth in the statement which has appeared in the *Indian Daily News* that a new set of rules in connection with the Official Secrets Act is under the consideration of Government; if so, will the Government publish the rules in the Official Gazette before final adoption, so as to enable the Press to discuss them?

The Hon'ble Mr. Cotton replied:—

"No rules under the Official Secrets Act have been framed by Government, and the Lieutenant-Governor is not aware that the preparation of any set of rules in connection with that Act is under contemplation."

[*Babu Surendranath Banerjee; Mr. Cotton.*]

THE MONGHYR ELECTION.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

Is it true as stated in the newspapers that Mr. Phillips, Magistrate of Monghyr, before he went on leave sent a circular to all the members of the District Board, in which he discussed the merits of the various candidates for election to the Bengal Council, and suggested that members should vote for Mr. Hennessy? Is it the case that the Maharaja of Sonbarsa has drawn the attention of Government to this circular, and has petitioned for the avoidance of the Monghyr election on the ground of the use of official pressure? Is it the case that Mr. Stack, the Inspector of Schools for Bihar, wrote to the Sub-Inspector of Schools at Monghyr, who is a member of the District Board, requesting him to vote for Mr. Hennessy; and is it the case that two new members of the District Board, both Europeans, were appointed by telegram, so as to be in time, to vote for the first election?

Does the Government approve of these proceedings; if not, will the Government be pleased to state what action it proposes to take in this connection?

The Hon'ble MR. COTTON replied:—

"The answer to the first two parts of the Hon'ble Member's question is in the affirmative, except that Mr. Phillips did not recommend that the members of the Monghyr Board should vote for any one candidate: he suggested two names as those of persons who had in his opinion preferential claims on the support of the District Board, viz., those of Mr. Hennessy and Rai Dhiraj Karan Bahadur. Mr. Phillips explains that he recorded his note because several members of the Board had asked him for his views and wishes. He probably thought that as he was leaving the district his advice was sought rather as an experienced friend than as an official, but still his conduct was indiscreet and opposed to the principle laid down by Government for the guidance of its servants.

"The Lieutenant-Governor does not think it necessary to make any enquiry as to whether Mr. Stack, the Inspector of Schools, Patna Circle, wrote to a Sub-Inspector of Schools requesting him to vote for any particular candidate, but he considers that any such letter, if written, would have been an indiscretion.

[*Mr. Cotton.*]

"It is the case that the appointment of two European members of the Monghyr District Board, which had been unduly delayed by slackness in the local offices and in the Secretariat, was made by a telegram, so as to enable them to vote at the elections. It was thought desirable that the Board should be of its full strength on so important occasion."

THE CALCUTTA ELECTRIC LIGHTING BILL.

THE Hon'ble MR. COTTON moved that the report of the Select Committee on the Bill to facilitate and regulate the supply of electricity for lighting and other purposes in Calcutta be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered in the form recommended by the Select Committee.

He said:—"I propose, with Your Honour's permission, to trouble the Council with an explanation of some of the more important changes introduced by the Select Committee in the drafting of this Bill. In section 3, which relates to the granting of licenses, it will be observed that a clause has been added declaring that the grant of a license to supply electricity within any local area shall not in any way hinder or restrict the grant of a license to any other person or company within the same area. This clause has been taken from the English amending Act of 1888. It was introduced in England after full discussion and consideration of the question whether an undertaker within any particular area should be allowed an absolute monopoly or not. There was nothing in the law of 1882 which authorised a monopoly; nothing was said on the subject, and it was entirely in the discretion of the Board of Trade to grant a second order or a second license in any particular area or not. So far, therefore, the amending Act of 1888 did not affect the procedure which the Board of Trade was competent to follow. But it was thought advisable when the law was under reconsideration to lay it down specifically, that a monopoly was not contemplated by the law. As I understand it one of the main reasons for such a provision was that the roads, streets, thoroughfares, &c., may not be unnecessarily interfered with. If two rival undertakers were to work at the same time, there would be a double set of operations, and the public would be subjected to unnecessary inconvenience. This I believe to be the main reason why local authorities in England have been in favour of monopolies, and in practice the Board of Trade has

not allowed two companies to work together in one area. Special cases may arise in which it is desirable that a second license should be granted, and to meet such cases the law was modified in England in 1888, and we have thought it desirable to follow the example of the Legislature in England and to introduce a similar clause in the Bill now before you.

"Section 4 of the Bill relates to the making of rules. If you examine this section, you will see that the rules to which it relates apply exclusively to rules regarding applications for licenses; they have no reference to the general public any further than this, that any member of the general public may of course become an applicant for a license. They apply specifically to any intending undertaker, laying down the exact form in which an application for a license should be made, and provide for any enquiries and so on in connection with the grant of such licenses. We have provided that any proposed rules made under this section or any modifications or repeal of such rules should be published in the *Calcutta Gazette*, and should not be taken into consideration by the Local Government until after the expiration of two months from the date of the original notification. It is thought that the period of two months is ample time to allow any person who is interested in the subject of the rules to take objection or to make suggestions with regard to such rules. I propose, with Your Honour's permission, to introduce a mere verbal modification which will clear up a point which is at present somewhat obscure in the wording of this section.

"Section 5 relates to the conditions to be inserted in the license. As I have said before this is the most important section in the whole law, and it is the conditions inserted in the license which will really control the working of this law when it is passed. We have added to those conditions a proviso taken from the English Act in order to afford greater security to the safety of the public. Among the conditions to be introduced, there is a clause (*a*) which relates to the safety of the public from personal injury or from fire or otherwise. The Board of Trade have found some practical inconvenience in inserting provisions under that clause which will meet cases as they arise, and it has been declared by the law in England that the Board of Trade shall have power to enact regulations for the same object,—that is the object of securing the safety of the public—which when passed should have the same force and validity as though they had been inserted in the license, and those regulations

may be modified from time to time. Experience has shown that this elastic arrangement is better than the insertion of any definite conditions on the subject in the license itself. We have followed the English procedure exactly in this respect, and under this proviso, if carried, it will be competent to the Local Government to enforce such regulations as they deem expedient for ensuring the safety of the public from personal injury or from fire or otherwise, and such regulations when passed shall bind the undertakers exactly in the same way as though they had been inserted as conditions in the license. Such regulations will not affect the general public any more than the conditions in licenses. They will affect undertakers only.

"Under section 16 we have agreed unanimously to omit the proviso which was suggested for our consideration by the Trades Association, and which declares that no lamps or electrical fittings shall be added without due notice given to the undertakers. This section 16, as I have already stated to the Council, gives effect to one of the main principles of the Bill, namely, that undertakers are authorised to supply electricity, or, as explained in the licenses or provisional orders granted under the Act, to supply electrical energy. That is the term used throughout the provisional order or license; and although this electrical energy is in the vast majority of cases devoted to the purpose of lighting, it is not intended by this Act, any more than by the corresponding English Act, that it should be devoted to lighting only. Section 16, which is reproduced from the English law, lays down that the undertakers shall not be entitled to lay down any special form of lamp or burner to be used by any company or person, or in any way to control or interfere with the manner in which electricity supplied by them under this Act, or by reason of any license, shall be used. The first proviso to that section was inserted on the recommendation of experts in England when the law was under consideration. Sir Frederic Bramwell and Dr. Siemens, probably the most competent authorities on the subject, gave it as their opinion that some restrictions should be imposed on consumers to prevent the misuse of electricity. I have perused their evidence, and find that they were unable to define the character of the misuse to which they thought electricity might be subjected. But they gave an illustration, the object being to prevent injury by any action reacting unfavourably upon the source of supply. The illustration they gave was this. If a person were to use the gas supplied to him by turning it on and off 100 times in

a minute, it would produce vibrations in the supply pipe which would be very objectionable. In the same way if a man was constantly trying reckless experiments with his electric lighting, he would endanger the supply to other consumers; his action might even endanger life and would tend to vilify the undertakers and their undertaking. And so in the model provisional order there is a special proviso which authorises undertakers to refuse to supply electric energy, unless they are reasonably satisfied that it will not be misused, and if it is misused to cut off the supply. The further proviso to this section of the law which the Select Committee decided unanimously to omit imposed further restrictions which the English law did not contemplate and which we deemed it unnecessary to impose in India.

"Section 27 of the Bill before you has been redrafted by the Select Committee, but as the language of the draft appears to admit of improvement, I propose, with Your Honour's permission, to suggest a revised form of this section which should take the place of that now before the Council.

"Only one point I think remains, and that is that the Select Committee thought it desirable that power should be given to the Local Government by notification in the Gazette to extend the provisions of this Act to any municipality. As now drafted the Bill applies to Calcutta, but power is taken in the last section to extend it to any municipality, including Howrah and any other large municipality, where the demand for electric lighting may arise and where the Government may deem it expedient to extend the provisions of this Bill. We have an example in this matter in the Hackney Carriage Act, which was originally brought in for the town and suburbs of Calcutta alone, but which has in a large number of cases been extended to other places by the special authority given to the Local Government by the Act."

The Hon'ble MR. SMYTH said:—"I have only a very few words to say regarding this Bill; but I think it will be satisfactory to the hon'ble mover of the measure for me to say that the interests I represent in this Council cordially approve of the introduction of this Bill, and I congratulate my hon'ble friend for having initiated a measure which will be welcome as supplying a long-felt want.

"The development of electric science in its application to the practical needs of human life may be considered to date from the time of Faraday, whose career

ended about the middle of the present century. In the past 40 years or so this science has advanced by leaps and bounds unequalled by any other knowledge since the commencement of the world's history. In 1880 the future of domestic electric lighting was secured by the introduction of the incandescent lamp. In 1882 the London Electric Lighting Bill was passed.

"And though the advances during the past 13 years have been great, still we know that greater achievements are in store for the present and for coming generations, as experience teaches us that the knowledge of to-day is as nothing compared with that of to-morrow. One can only then wonder that Calcutta—which prides herself on being in the front rank of cities of the world as regards importance,—has been so long without this improved light, more especially as she enjoys undisputed and unenvied the honour of being one of the hottest cities of the world.

"The introduction then of artificial light should be a boon to her citizens who have now to be content with the heat generating properties of gas and oil:—The reason why Calcutta has not followed the lead of nearly all the important cities of Europe in this matter is to my mind not far to seek. The absence of any law on the subject has been a bar to enterprise. Now that this Council is about to needfully legislate, I have little hesitation in saying that a stimulus to electric lighting will be given, and I fully believe and expect capital will not be wanting, and schemes will be put forward for supplying electricity over many of the most important areas of the town.

"With regard to the Bill itself I venture to consider it a fair and workable measure; for the Select Committee, while on the one hand being careful to guard the public interests have, on the other hand endeavoured to avoid making stringent regulations that will act as a deterrent to intending suppliers of electricity, and so defeat the intention of the Bill. I would now, as briefly as possible, draw your attention to some of the more important clauses of the Bill before you which have had the attention of the Select Committee. I would, in the first place, particularly draw your attention to the title of the Bill. It is a Bill to facilitate and regulate the supply of electricity for lighting and other purposes. This follows exactly the wording of the English Act of 1882. What I wish to emphasize is that the Bill is not being initiated for the sole purpose of electric lighting only, but it is to facilitate and regulate the supply of electricity for other purposes as well. I may here say that the Bill

would not have been half so welcome had it been a Bill to facilitate and regulate the supply of electricity for lighting only.

"It does not lie within my province to say what those other purposes may be, but the uses of electricity are boundless, limited only by the want of intelligence in producing fitting apparatus for its application. The demand for such apparatus is limited only by the want of intelligence on the part of the public to know how to use it properly.

"So rapid, indeed, has been the development of the electric industry that few have been able to keep trace of its achievements, and fewer still have sounded its possibilities for the purpose of giving direction to its growth.

"Electric power has produced, and will still produce, more changes in the mechanical servants and conveniences of civilized life than have ever been caused by the use of any other method or force which has been subjected to the service of man.

"In section 3, sub-section (2), you will notice the license shall be for any period not exceeding 21 years. In the original draft of the Bill this period of time was limited to seven years, but the Bengal Chamber of Commerce in their report on the Bill pointed out that the installation of the electric light on a large scale was a most costly undertaking, and that 21 years was the least period of time adequate to secure to the undertakers a reasonable return on their investment, and this suggestion was, I am glad to say, at once accepted as reasonable by my hon'ble friend MR. COTTON.

"You will notice in section 3, sub-section (5), that the grant of a license to supply electricity within any area shall not hinder the granting of a license to any other undertaker within the same area. This point was duly considered by the Select Committee, and though at first sight it appears to press somewhat hardly on the holder of the first license, still the Select Committee in following the English Act thought it might be a useful clause in the case of unsatisfactory undertakers.

"Section 24, sub-section (2)—Any difference which arises between the telegraph authority and the undertakers or their agents, &c.

"The attention of the hon'ble mover was drawn to this, and it was pointed out that it conflicted with the very proper provision for arbitration in sections 15 and 16. The Bengal Chamber of Commerce thought a good deal of

dissatisfaction would or might be caused by vesting such power in the Local Government; and they could see no reason why a dispute between undertakers or their agents, and a Department, should be absolutely left for disposal to the Local Government, and the Chamber suggested the section should be brought into conformity with sections 15 and 16.

"The hon'ble mover met this line of argument by saying, the section was worded in conformity with the wishes of the Government of India who in their letter of the 12th of March last wrote:—

"'That they considered it would weaken the safeguards of the Imperial Telegraph system, if questions affecting the safety of that system were left to be determined by arbitration.'

"In conclusion, I would merely say, as the hon'ble mover said when introducing the measure, that this Bill after all is only the 'dry bones,' the license (which is to be granted to those who we trust will come forward to supply electricity for lighting and other purposes) is the real 'flesh and blood.'

"The object then of the Select Committee has been to prepare the 'dry bones,' in the best possible manner for the application of the 'flesh and blood,' in the shape of the license.

"This license, you are aware, is entirely an executive measure with which we have nothing to do; but I would merely point out that in my opinion the success of the scheme depends as much upon the wording of the license as upon the drafting of this Bill."

The Hon'ble MR. A. M. BOSE said:—"I have one observation to make in connection with a point arising out of section 12. Section 6 lays down that the undertakers under superintendence may open and break up streets, railways, tramways, and bridges, and also the sewers, drains, or tunnels within or under such streets, railways, tramways, and bridges. Then section 12 requires, except in certain cases, the consent of the local authority, company, or person by whom such street, railway, or tramway is repairable before these can be broken up. But in that section there is no reference to bridges, sewers, &c. That is to say, under the provision as it now stands the consent of the local authority is necessary to break up streets, railways, and tramways, but to break up bridges, &c., which is even a more serious operation than opening up streets, such consent is not necessary. I shall be glad to learn whether the

matter has been considered by the Select Committee, and whether there is any special reason for which consent is rendered unnecessary in the case of bridges. If there is no special reason, I hope the hon'ble member in charge of the Bill will take the matter into consideration and introduce a provision in section 12 by which breaking up of bridges, &c., will be subject to the same limitations and safeguards as the opening up of streets, railways, and tramways."

HIS HONOUR THE PRESIDENT said:—"The remarks made by the hon'ble gentleman are hardly applicable to the question before the House at the present moment. He refers to imperfections in a particular section, but he does not himself bring forward an amendment. It would have been more convenient if the hon'ble member had considered the subject in proper time and had drafted an amendment to meet the difficulty which occurred to him. The subject will not, however, be lost sight of, and I shall ask my hon'ble friend, the Chief Secretary, in charge of the Bill to refer to this matter before the House is closed."

The motion was put and agreed to.

The Hon'ble MR. COTTON said:—With the permission of the PRESIDENT, I will move a verbal amendment in section 4, sub-section (2), clause (*a*). It is enacted by that clause that the Local Government shall, before making, altering, or repealing rules under this section, publish a draft of the proposed rules, alterations, and repeals. The expression "draft of the proposed rules and alterations" is no doubt appropriate, but the publication of a draft repeal is ambiguous. In order to remove that ambiguity I move that before the word "repeals" the words "a notification of any proposed" be inserted. Clause (*a*) will then run thus:—"Publish a draft of the proposed rules and alterations and a notification of any proposed repeals in the *Calcutta Gazette*." Similarly, I move that in clause (*b*) of the same sub-section the words "or notification" be inserted after the words "such draft."

The motion was put and agreed to.

The Hon'ble BABU SURENDRANATH BANERJEE moved that in section 13 for the words "Local Government" the words "Local Authority" be substituted.

[*Babu Surendranath Banerjee.*]

He said:—"Section 13 provides that the undertakers may construct electric lines above ground, subject to the sanction of the Local Government. I desire to relieve the Government of any responsibility in this matter. It is a responsibility which it seems to me will be more efficiently discharged by the local authorities, who will be more conversant with local affairs than the Local Government can be. My amendment imports the substance of the English Act. Under the English Act the Board of Trade issues licenses; the local authority gives the sanction contemplated under this section. There seems no reason why we should make a departure from the English law in this respect. If it could be shown that any local authority vested with jurisdiction had misused the powers entrusted to them, then some ground would exist for taking away this power from them and vesting it in the Local Government. On the contrary, facts point to an exactly opposite conclusion. There is nothing at present to prevent the Calcutta Municipality from giving sanction for overhead wires along the Harrison Road. Several times proposals to that effect were put forward, and on every occasion the Corporation resisted the application. Therefore there seems to me no ground for a modification of the English Statute. In moving this amendment, I am supported by the high authority of the Chamber of Commerce. They say as regards section 12, which is section 13 now, that under the English Act the Board of Trade gives licenses, but the local authority has the power to authorise above-ground works. This is what they say:—

'As regards section 12, they note that in the English Act the Board of Trade gives the license, but that the "local authority" has the power to authorise restrictions as to above-ground works. By section 12 of the Bill, the Local Government is invested with this power, as with the power under section 3 to grant a license. The Committee think it would be more in accordance with the spirit of the English Act, and conduce in a larger degree to efficiency of working, if under section 12, instead of "Local Government," "Local Authority" was substituted.'

"I hope my hon'ble friend the member in charge of the Bill will see his way to accept the amendment I have the honour to propose. I pressed this amendment in Select Committee, and as I think there is an important principle at stake, I hope the hon'ble member will see his way to give effect to the popular feeling in regard to this matter."

[*Mr. Cotton; Maulvi Muhammad Yusuf; Babu Surendranath Banerjee.*]

The Hon'ble MR. COTTON said:—"I am afraid I must oppose this proposal. I am not aware that there is any popular feeling in respect of the matter; but as far as popular feeling has expressed itself, it is opposed to any overhanging wires at all. The Bengal National Chamber of Commerce said that the only criticism they had to offer was that overhanging wires should be absolutely prohibited. But be that as it may, the question of overhead wires was, as I explained in some detail when I introduced this Bill, a very difficult and technical matter, a matter which has given rise to more dispute and friction probably than any other section of the law has in England. The risks are no doubt very considerable; they may or may not be exaggerated, but they are certainly very considerable. On the other hand, the difficulties to be contended against in laying underground lines in a soil as damp as that of Calcutta may or may not be serious; so that there is a good deal to be said on both sides. The question is one of great importance to the public and to electric lighting in Calcutta. It was decided by the Government that the power of decision should be taken away from the hands of the local authority who have no experience in matters of this nature, and that it should rest in the hands of the Local Government who would not be influenced by any personal interest, and would always be guided by the advice of experts. This is a provision of the Bill which I cannot advise the Council to modify."

The Hon'ble MAULVI MUHAMMAD YUSUF said:—"I am unable to support the amendment, and I think it will be much better to allow the section to remain as it is. In regard to the matters contemplated by the section in question, there is no reason to suppose that the result of the deliberations of the Calcutta Corporation will inspire the public with greater confidence.

The Hon'ble BABU SURENDRANATH BANERJEE said in reply:—"I must say I have not been convinced by the arguments which have been adduced against my amendment. I am not prepared to admit that in a purely local matter affecting local interests the deliberations of the Local Government, who have so many interests to attend to, will inspire greater confidence than the deliberations of a local body, the scope of whose jurisdiction is far more restricted. It is said that local authorities have no experience in these matters. That is perfectly true, but when you entrust them with authority in respect of any matter, is it not likely that they will gain experience? When called upon to

exercise their authority in such matters they will consult experts, and that is precisely what the Corporation did in regard to the system of electric lighting in Harrison Road. In the next place it is insinuated that popular feeling, if there is any, is opposed to overhead wires. We do not say whether there are to be overhead wires or not. The whole question, if my amendment be accepted, will be left to the decision of the local authority; they will decide whether in any particular area there should or should not be overhead wires; and it seems to me that this being a purely local question, it ought to be left to the decision of the local authority. It may be that they have not experience, but in regard to many matters entrusted to them, have they not in the first instance to gather information and experience? What experience had the Calcutta Corporation about gas, when they entered into a contract with the Oriental Gas Company? But they gained experience in time. No case, not the shadow of a justification, has been made out to authorize a deviation from the provisions of the English law in this respect. In the preparation of this Bill we have carefully followed the English Statute, and we can have no better guide; the English Statute entrusts this jurisdiction to the local authority, and why should we not follow the English Statute?"

His Honour the President said:—"I am bound to say that the Government holds a very decided view on this subject, and calls upon those who share that view and who are influenced by their arguments to oppose the amendment now brought forward. In the first draft of the Bill which was drafted under my original orders, and which contained a provision equivalent to that which the hon'ble member desires to see reintroduced, we followed the English Act completely. The Government of India, however, drew our attention to the great importance of avoiding the danger to life which might ensue from a a mistaken procedure and the serious interests that are involved. I sympathise entirely with the Hon'ble Babu Surendranath Banerjee in his picture of the Calcutta Corporation yearning to acquire more knowledge on every possible subject, and their desire to 'follow knowledge like a sinking star beyond the farthest bounds of human thought.' I would only ask the hon'ble member and those acting with him to restrain that desire when it involves or might involve the lives of his fellow creatures. The experience of England and of continental countries has shown the extreme danger of overhead wires, and it would be very disastrous if the Corporation of Calcutta were not to

accept the experience of Eupore, but should wish to acquire that knowledge and experience at the expense, possibly, of the lives of some of the hon'ble members whom I see around me. Whatever we may think of the Calcutta Corporation, which is by far the most enlightened body we have to deal with, I would remind you that it is proposed to extend the Bill to any municipality throughout Bengal, and it may certainly be said, without derogation to the Municipal Commissioners of many of those places, that we should be very sorry to put the chance of mortal injury to ourselves or to our friends in their hands, even though we have so much confidence in the Corporation of Calcutta that we are prepared to accept that risk as far as they are concerned. I must therefore express the hope that the Council will not accept this amendment."

The motion was put and negatived.

The Hon'ble BABU SURENDRANATH BANERJEE moved that the following proviso be added to section 14:—

"Provided that when a local authority considers it necessary to alter the position of any street or of the underground pipes and drains and other works, or to put down new pipes, drains, or other works, such local authority may require the undertakers to shift their electric lines at the expense of the undertakers."

He said:—"I move this amendment at the suggestion of the Chairman of the Corporation. In a letter, dated 18th June, 1895, addressed to the hon'ble member in charge of the Bill, Mr. Ritchie suggested the proposal which is embodied in the amendment I have the honour to move. The amendment embodies the relations which exist at the present moment between the Corporation and the Oriental Gas Company. When they shift their pipes at the instance of the Corporation owing to a change in the position of any street, pipe, or drain, they do so at their own cost, and I have just received a letter from the Manager of the Gas Company to say that although it is not a legal obligation upon them to shift their pipes in such cases at their own cost, they do so willingly, and practically they have charged nothing for it for a number of years. It seems to me that undertakers under this Bill ought to make a concession of this kind to a public body and for the public benefit as a return for the concessions which they receive from it; under the circumstances, I hope the hon'ble member will accept my amendment."

[*Mr. Cotton.*]

The Hon'ble MR. COTTON said:—"I am afraid the hon'ble member has not read section 14 of the Bill, to which he proposes to add this proviso, with the attention it deserves. The proviso, if carried out, would have the effect of repealing one half of section 14 of the Bill as it stands. Now section 14 is an exact reproduction of the English law on the subject. The section is a little intricate perhaps, but I think I shall be able to make its meaning clear. It empowers the undertakers to alter the position of any pipes or wires under any street or place authorised to be broken up by them on previously making or securing such compensation to the owners of such pipes or wires, and on complying with such conditions as to the mode of making such alterations as may be agreed upon between the undertakers and owners of such pipes or wires, and in case of difference of opinion then the matter may be determined in the manner prescribed by the license authorising the undertakers to supply electricity, or when no such manner is prescribed, then the matter is referable to arbitration. Then the latter part (clause 2) of the same section reverses the arrangements between the parties. It lays down that any local authority may in like manner alter the position of any electric lines or works of the undertakers subject to the identical provisions, conditions, and restrictions which are made applicable to any changes or alterations made by the undertakers. Therefore the law as we have it before us, and which as I have said is the English law on the subject, provides the procedure under which a local authority should act when it desires to alter the position of underground electric works. The section goes into considerable detail; it contemplates the payment of compensation and imposes various other conditions, and I may add that the model order, which is practically the form of license which will be adopted in Calcutta, subject to such modifications as local requirements may suggest, gives further details, such as the length of time for which notice has to be given and other things which the undertakers have to do when they require gas or other pipes to be removed. Exactly the same procedure is contemplated when the local authority such as a municipality, when altering its own sewers or pipes or for any other reason, has occasion to remove the works of the undertakers. And reflection will show that similar provisions should apply in both cases. The suggestion of the hon'ble mover of the amendment is there should be an entirely one-sided provision, and that the undertakers should bear the expense in both cases. This is just one of those proposals which is calculated to

discourage the extension of electric energy in Calcutta. It will impose restrictions in Calcutta which have not been found necessary anywhere else, and will be viewed by undertakers as evidence of the wish of the authorities to put obstruction in the way of such undertakings. I attach no weight to the analogy put forward by the hon'ble member of the case of the Oriental Gas Company. The arrangement referred to is probably done under contract with the Gas Company, but Electric Companies should be protected by special provisions to be laid down in the Act. If you accept this amendment, you will practically be repealing the whole of the last portion of section 14 of the Bill. I trust, therefore, you will see the wisdom of leaving the Bill as it has been drafted by the Select Committee."

The Hon'ble BABU SURENDRANATH BANERJEE in reply said:—"I must confess that I have not been able to follow the hon'ble member in the line of argument he has thought fit to adopt in reply to my proposal. When I move an amendment on the lines of the English Statute, I am told that the peculiar circumstances of the case are such that the English law must be departed from. When again I move an amendment adapted to the particular circumstances of the case, I am told that the English Statute must be followed. We are fairly landed in a bewildering maze when we are confronted with an argument of this kind. The point on which the hon'ble member has laid considerable stress is that my amendment, if adopted, is calculated to discourage the growth of enterprise. If that be so, I admit that my amendment should not be adopted. But is it calculated to discourage enterprise? It certainly has not discouraged the Gas Company in carrying out extensive works in Calcutta. Undertakers will make their terms accordingly; they will recoup themselves by the terms they will impose when they find there is a proviso of this kind laid down by the Legislature. The Gas Company in their dealings with the Corporation make no charge for shifting their pipes at the request of the Corporation. It is not a part of their contract to do so, but as a matter of fact they do not charge anything when they shift their pipes at the instance of the Commissioners. Therefore, having regard to all these circumstances, I hope this amendment, which is made at the instance of the Chairman of the Corporation, will be considered as being reasonable and will be accepted by the Government. Local authorities represent the public, and this is a concession

which they might fairly be expected to make for the public benefit, and I do not think undertakers ought to object to such a condition as this."

The motion was put and negatived.

The Hon'ble MR. COTTON said:—"With Your Honour's permission I will ask leave to move an amendment of section 27 to which I referred in my opening remarks to-day. The language of that section as it stands is, it must be admitted, obscure. The meaning, however, is plain enough. The meaning is that a person who commits an offence under this Act may also be prosecuted under any other Act for the time being in force for any offence which he may have committed under such Act, provided that he shall not be punished twice for the same offence. This is an obvious principle of law which it is perhaps not necessary to have inserted in this Act at all, and so we hesitated in Select Committee whether any section on the point should find a place in the Act. Ultimately, it was decided that for the edification of the general public, who might not be aware of the common law on the subject, statutory provision should be made as I have indicated. But I admit that the wording of the section does not convey the meaning as clearly as it might have done, and therefore move that the following words be substituted for section 27 as amended by the Select Committee:—

'Nothing in this Act shall exempt a person from any liability for any offence which is also made punishable under any other Act or law for the time being in force.'

These words, I think, convey the meaning of the Select Committee, and are not open to the exception to which the words contained in the draft Bill are open."

The motion was put and agreed to.

The Hon'ble MR. COTTON said:—"With your permission I do not propose to move to-day that this Bill be passed, but to suggest that it should stand over until the meeting of this Council next week so as to enable the Secretary in the Legislative Department and myself to examine the Bill once more with reference to minute details of drafting, and also to enable me to consider the suggestion thrown out by the Hon'ble MR. ANUNDO MOHUN BOSE in regard to the procedure to which he referred under sections 6 and 12 of the Bill. Section 12 is a reproduction of the English Act on the subject, and I am not in a position, until

[*Mr. Cotton; Mr. Risley; Mr. Buckland.*]

I have examined the reasons which led to the English Act being drafted as it is, to explain why there is no reference to bridges in that section."

The motion that the Bill be passed was postponed to the next sitting of the Council.

THE CALCUTTA PORT ACT, 1890, AMENDMENT BILL.

The Hon'ble MR. RISLEY presented the report of the Select Committee on the Bill to further amend the Calcutta Port Act, 1890.

THE BHUTAN DUARS REPEALING BILL.

The Hon'ble MR. BUCKLAND presented the report of the Select Committee on the Bill to repeal the Bhutan Duars Act, XVI of 1869.

The Council adjourned to Saturday, the 3rd August, 1895.

C. E. GREY,
Offg. Assistant Secretary to the Govt. of Bengal, Legislative Department.

CALCUTTA;
The 15th August, 1895.

Reg. No. 4736—300-16-8-95.

Abstract of the Proceedings of the Council of the Lieutenant-Governor of Bengal, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 *and* 1892.

The Council met at the Council Chamber on Saturday, the 3rd August, 1895.

Present:

The Hon'ble Sir Charles Alfred Elliott, K.C.S.I., Lieutenant-Governor of Bengal, *presiding.*

The Hon'ble Sir Griffith Evans, K.C.I.E., Offg. Advocate-General.

The Hon'ble H. J. S. Cotton, C.S.I.

The Hon'ble D. R. Lyall, C.S.I.

The Hon'ble J. A. Bourdillon.

The Hon'ble C. E. Buckland, C.I.E.

The Hon'ble H. H. Risley, C.I.E.

The Hon'ble R. C. Dutt, C.I.E.

The Hon'ble Rai Durga Gati Banerjea Bahadur, C.I.E.

The Hon'ble Nawab Syud Ameer Hossein, C.I.E.

The Hon'ble Surendranath Banerjee.

The Hon'ble Maharaja Sir Luchmessur Singh Bahadur, K.C.I.E., of Darbhanga.

The Hon'ble Maharaja Jagadindra Nath Roy of Nator.

The Hon'ble Maulvi Muhammad Yusuf, Khan Bahadur.

The Hon'ble C. E. Smyth.

The Hon'ble A. M. Bose.

The Hon'ble Rai Eshan Chunder Mittra Bahadur.

The Hon'ble Guru Proshad Sen.

NEW MEMBERS.

The Hon'ble Nawab Syud Ameer Hossein and the Hon'ble Babu Guru Proshad Sen took their seats in Council.

[*Babu Surendranath Banerjee; Mr. Cotton.*]

THE FORESHORE AT AZIMGANJ.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

"(*a*).—Is the Government aware that the District Collector of Murshidabad has acquired the zamindar's rights in the foreshore at Azimganj with the object of conferring upon the East Indian Railway exclusive rights in the foreshore and the river bed at Azimganj, to the exclusion of all other persons, including the Calcutta Steam Navigation Company, although the foreshore had always been used as a public towing-path and as a public landing place even before the construction of the railway, and although the river Bhagirathi is a navigable river and its bed is therefore inalienable public property?

"(*b*).—As the river Bhagirathi is under the operation of the Canal Act (V of 1864, B.C.) and is under the charge of the Public Works Department, was the transfer of the foreshore and bed of the river at Azimganj to the East Indian Railway made with the consent of that department?

"(*c*.) Is it a fact that, in order to enforce the exclusive rights which it was attempted to confer on the East Indian Railway and to the prejudice of the Calcutta Steam Navigation Company, the District Magistrate issued the following notice and had it proclaimed by a crier:—

"'NOTICE.

"'Notice is hereby given to the public that the foreshore land of Azimganj has been taken over by the East Indian Railway Company. No country boat nor any steamer should moor alongside that foreshore land in such a way as to cause obstruction to the mooring of the ferry steamer of the railway company of that place.'

"Does the Government approve of these proceedings? What action does the Government intend to take in regard to this matter and with a view to prevent serious injury to the interests of the Calcutta Steam Navigation Company, which has done excellent public service in improving the means of communication in Bengal, by forbidding the Company the use of navigable rivers and public landing places?"

The Hon'ble MR. COTTON replied:—

"Enquiry is being made into the subject of the Hon'ble Member's Question, and the result will be communicated to him in due course."

[*Babu Surendranath Banerjee; Mr. Cotton.*]

ALLEGED ISSUE BY MR. HEARD, SUBDIVISIONAL OFFICER OF DEOGHUR OF NOTICES BEARING THE SEAL OF HIS COURT DEMANDING A FREE SUPPLY OF PROVISIONS.

The Hon'ble BABU SURENDRANATH BANERJEE asked—

"Has the attention of the Government been drawn to an article in the *Hitabadi* newspaper stating that Mr. Heard, the Subdivisional Officer of Deoghur, is in the habit of issuing notices bearing the seal of his Court, demanding a free supply of provisions, such as fowls, eggs, goats, sheep, &c., and that whenever he gets more than what he wants himself, he causes the surplus to be publicly sold to the highest bidder by the *Nazir* of his Court?

"Will the Government be pleased to institute an enquiry with a view to ascertain the truth or otherwise of these serious allegations, if it has not already done so?"

The Hon'ble MR. COTTON replied:—

"Enquiry is being made into the subject of the Hon'ble Member's Question, and the result will be communicated to him in due course."

THE CALCUTTA ELECTRIC LIGHTING BILL.

The Hon'ble MR. COTTON moved that in sub-section (1) of section 5 of the Bill to facilitate and regulate the supply of electricity for lighting and other purposes in Calcutta, the words "regulations and" be inserted after the word "such" and before the word "conditions."

He said:—"These words seem to have slipped out of the Bill by oversight. They are contained in the corresponding section of the English Act, and are necessary with reference to sub-section (4) of section 3 of the Bill, which, it will be observed, contemplates that the license may make regulations as well as conditions. This omission was discovered when I was lately considering the Act with the assistance of the Secretary to the Legislative Department. The amendment merely supplies an omission in drafting."

The motion was put and agreed to.

[*Mr. Cotton; Mr. A. M. Bose.*]

The Hon'ble MR. COTTON also moved the following amendments in section 12:—

That in sub-section (*1*) of section 12 the words "open or" be inserted after the word "to" and before the words "break up";

also that the words "bridge, sewer, drain or tunnel" be inserted after the word "tramway" and before the words "without the consent of";

also that the words "bridge, sewer, drain or tunnel" be inserted after the word "tramway" and before the words "is repairable."

He said:—"These amendments are moved with reference to the observation made by my hon'ble friend, Mr. Anundo Mohun Bose, at the last meeting of the Council, when he pointed out that the word 'bridge' as well as 'drain and tunnel' found a place in section 6 and subsequent sections of the Act, but were omitted in section 12. Sections 6 to 11 of the Bill were all adopted from the Gas Works Clauses Act, and are intended to give power to the undertakers under certain conditions to open and break up streets, railways, tramways and bridges, and to open and break up any sewers, drains or tunnels within or under such streets, railways, tramways and bridges. In order to make these sections as complete as possible, we went, in drafting this Bill, somewhat beyond the provisions of the Gas Works Clauses Act, and provided that they should relate to streets, railways, tramways and bridges, as well as to sewers, drains and tunnels. Section 12 requires the undertakers to obtain the consent of the authority by whom such streets, &c., may be repairable. It was drawn up in exact conformance with the English Act, but the words 'bridges, sewers, drains and tunnels' were omitted. I am disposed to agree with my hon'ble friend that it will make the section more complete if these words were inserted. I therefore move these amendments in section 12 thereby bringing it into exact conformity with the preceding sections."

The Hon'ble MR. A. M. BOSE said:—"I have to thank the hon'ble member in charge of the Bill for accepting the amendment which I suggested on the last occasion. The addition of the words now proposed will not only remove an anomaly, but will provide a safeguard against the breaking up of bridges, drains and tunnels without the previous consent of the authority by which they are repairable."

The motion was put and agreed to.

[*Mr. Cotton; Mr. Risley.*]

The Hon'ble MR. COTTON moved that the Bill, as now settled by the Council, be passed. He said—

"I think it will be found a practical and workable measure, well calculated to effect its object, which is to facilitate and regulate the supply of electricity for lighting and other purposes. I take this opportunity of assuring the hon'ble members of this Council, and in particular my hon'ble friend, MR. SMYTH, the representative of the Bengal Chamber of Commerce, whom I desire to thank for the valuable assistance he rendered while the Bill was under consideration in Select Committee, that the licenses and the rules and regulations which will be framed under this Bill will receive the most careful attention and consideration of the Government in the Public Works Department with a view of meeting the convenience both of undertakers and of the public."

The motion was put and agreed to.

THE CALCUTTA PORT ACT, 1890, AMENDMENT, BILL.

The Hon'ble MR. RISLEY moved that the Report of the Select Committee on the Bill to further amend the Calcutta Port Act, 1890, be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered in the form recommended by the Select Committee.

He said:—"As the Report of the Select Committee has been circulated to all the members of the Council, it is unnecessary for me to add anything material to it. The Bill as it stands now, as I have already said, practically embodies the agreement come to between the parties most concerned, namely, the Port Commissioners and the Corporation of Calcutta. The form of the Bill has been determined by the legal advisers of those two bodies, and it has been put into the form in which it stands mainly with the object of saving the persons from whom the taxes and other charges will have to be collected from the inconvenience and annoyance of having to make several separate payments. That is the reason why the rates will be collected by the Port Commissioners and paid over to the Corporation by them. As regards the amendment, which my hon'ble friend, the member for the Corporation, has brought forward, I had the advantage

of discussing it with him and also with a representative of the Port Commissioners, and I suggested that the object of the amendment, would be sufficiently met by adding to section 66M the words 'the first month of.' The section will then read 'the Commissioners shall during the first month of each succeeding quarter pay to the Corporation, &c.' That I understand has been accepted both by the Port Commissioners and the Calcutta Corporation. It will give the Port Commissioners a month within which to pay the rate which they would have to collect with the rent payable by their tenants. I move this amendment on the understanding that my hon'ble friend, BABU SURENDRANATH BANERJEE, is willing to accept it."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I gladly accept the amendment proposed by my hon'ble friend, the member in charge of the Bill. It is in the nature of a compromise which, I think, will meet, so far as is practicable under a compromise, the interests of both parties. In accepting this amendment, I desire to thank my hon'ble friend and the Government for the promptitude with which they have introduced this Bill in response to an appeal which I made to the Government in April last. Owing to a legal difficulty the Corporation cannot assess basti lands, the property of the Port Commissioners, and it loses about Rs. 20,000 a year. The object of this Bill is partly to remedy this state of things."

The motion was put and agreed to.

The Hon'ble MR. RISLEY moved that the Bill as amended be passed. He said:—

"I do not think any further comment is necessary. It is essentially a Bill to which all parties interested have consented, and there is every reason to hope that it will work smoothly."

The motion was put and agreed to, and the Bill was then passed.

THE BHUTAN DUARS REPEALING BILL.

The Hon'ble MR. BUCKLAND said:—"It will be in the recollection of the Council that when I introduced this Bill to repeal Act XVI of 1869 four weeks ago in this Council, I stated at sufficient length the nature of the Act which

it is proposed to repeal, its temporary character, and our objects and reasons for repealing it. It will be unnecessary for me to go over the same ground again. The Bill was referred to a Select Committee in the form in which it was introduced, and has passed through the Select Committee without any material alteration. The Select Committee came to the conclusion that, the object being to repeal Act XVI of 1869, the Bill which had been drafted carried out that intention fully and completely; it was therefore unnecessary for the Select Committee to make any but a verbal alteration in the clauses of the Bill. I have therefore to move that the Report of the Select Committee on the Bill to repeal the Bhutan Duars Act, XVI of 1869, be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered in the form recommended by the Select Committee."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I desire to congratulate the Government on the introduction of this Bill. It will be in the recollection of hon'ble members that in January 1894, I put a question with reference to this matter, and I asked my hon'ble friend whether the Government would repeal Act XVI of 1869 in the Bhutan Duars. The hon'ble member in charge of the Bill was understood to give a favourable answer. He said that the matter was under the consideration of the Government, and I take it that this Bill is the outcome of those deliberations. But I should have rejoiced if the scope of the legislation now undertaken were a little further extended by the repeal of Act X of 1859 in the regulation portion of the Jalpaiguri district. I put a question in Council in this connection. An error had unfortunately crept into that question, of which the hon'ble member in charge of the Bill took advantage, and indulged in a pleasant retort. He said there was no rent law in force in the non-regulation portion of the Jalpaiguri district. That is quite true. But Act X of 1859 is in force in what is known as the regulation portion of the Jalpaiguri district. I would appeal to the Government to complete the scheme of beneficent legislation upon which it is embarked, by consenting at no distant day to repeal Act X of 1859 in the regulation portion of the district. That Act is not working satisfactorily—that is the universal complaint, the universal opinion of officials and non-officials. So far back as the year 1879, the District Judge of Rangpur took this view of the matter. Lord Ulick Browne, who was Commissioner of the division from 1877 to 1885, was opposed to the continuance of the Act, and I believe Mr. Nolan, the present

Commissioner, is of the same opinion. The people presented a petition in favour of the repeal of the Act in 1891. Having regard to this strong expression of opinion coming from so many different quarters, I hope and trust Your Honour will see your way to repeal Act X of 1859 in the regulation portion of the Jalpaiguri district. I hope my hon'ble friend in charge of the Bill will be able to give us an assurance to that effect."

The Hon'ble MR. BUCKLAND said:—"The speech of the hon'ble member who has just sat down has come upon me as a surprise. The question of the repeal of Act X of 1859 in the regulation portion of the district of Jalpaiguri is not the question before the Council at the present moment. It is a matter for consideration and reference to previous reports on the subject, and to the local officers before any such action can be taken. At the same time I wish to point out that the hon'ble member, while asking for the repeal of Act X of 1859 in the portion of the Jalpaiguri district to which this Bill does not apply, has not in any way suggested what law he would like to take the place of Act X of 1859. It has been under the consideration of Government whether in the tract of country, for which we are now legislating, we should introduce Act X of 1859, or the Bengal Tenancy Act, and, after mature consideration, we came to the conclusion that the tract is not ripe for the introduction of the Bengal Tenancy Act. And further, as regards the older portion of the district, we have had no cause to consider the question of repealing an Act which has long been in force and which, as far as we are aware, is working very well. The question not being before the Council at this moment, and no substantive amendment having been proposed, there is nothing, as far as I can see, to vote upon, and it is quite premature for the Government to make any promise whether Act X of 1859 can be repealed in a portion of the country for which we are not now legislating.

The HON'BLE THE PRESIDENT said:—"I may add to what has just been said by the hon'ble member, the Secretary in the Revenue Department, that the question of repealing Act X of 1859 is not only not now before the Council, but it will never be. If the Government consent at any time to withdraw that Act from what is known as the regulation portion of the Jalpaiguri district, and to introduce another Act in its place, it will be open for the Government to do so under the Scheduled Districts Act with the sanction of the Government of India.

[*The President; Mr. Buckland; Mr. Lyall; Maharaja Sir Luchmessur Singh Bahadur of Darbhanga.*]

The remarks of my hon'ble friend, as to the unsuitability of this Act to the district in question, will be borne in mind, and if any proper and suitable representations come before the Government, showing the unsatisfactory working of the Act, and that any other Act would work more suitably, I can undertake that the Government will at some future time accept those representations, and give them their best consideration. But as I have said, the question of repealing Act X of 1859, so far as its application to the Jalpaiguri district is concerned, will not come before this Council.

The motion was put and agreed to.

The Hon'ble MR. BUCKLAND moved that the Bill be now passed.

The motion was put and agreed to, and the Bill was then passed.

THE BENGAL SANITARY DRAINAGE BILL.

The Hon'ble MR. LYALL moved that the following be substituted for sub-section 2 of section 35 of the Bill to facilitate the construction of drainage works for improving the sanitary condition of local areas:—

"(2) The Local Government shall, before making, altering or repealing rules under this section, publish a draft of the proposed rules and alterations and a notification of the proposed repeals in three consecutive numbers of the *Calcutta Gazette*, and shall specify a date not less than one month from the date of publication, at or after which such draft and notification will be taken into consideration.

"(3) The Local Government shall receive and consider any objection or suggestion which may be made by any person with respect to such draft and notification before the date so specified.

"(4) Every rule so made or altered, and every repeal of any such rule under this section shall be thereafter published in the *Calcutta Gazette.*"

He said:—"This amendment is proposed in accordance with what passed in the Council a fortnight ago. The clause has been redrafted by the Secretary in the Legislative Department."

The Hon'ble MAHARAJA SIR LUCHMESSUR SINGH BAHADUR of Darbhanga moved that the discussion upon this Bill be postponed for three months, inasmuch as the Bill has been so altered in Select Committee that it is desirable that

[*Maharaja Sir Luchmessur Singh Bahadur of Darbhanga; the President; Babu Surendranath Banerjee; Mr. Lyall.*]

the Bill be republished in order to afford an opportunity for such public bodies as the Chamber of Commerce, the British Indian Association, the Indian Association, and other Associations to express their views on the Bill as it has been revised.

HIS HONOUR THE PRESIDENT said:—"I think it will be more convenient if the hon'ble member would bring forward this amendment at the next stage of the Bill, when the motion for the passing of the Bill is before the Council. What is now before the Council is merely an amendment proposing some small alterations in the wording of a particular clause."

The Hon'ble MAHARAJA SIR LUCHMESSUR SINGH intimated his acquiescence in the remarks made by His Honour the President.

The Hon'ble BABU SURENDRANATH BANERJEE called the attention of the Council to the wording of section 11 of the amended Bill as it was laid on the table. A mistake had apparently been made in the drafting. The section, as it was now worded, did not correctly carry out the compromise which was accepted by the Council on my motion.

The HON'BLE THE PRESIDENT said:—"The hon'ble member's remarks are quite justified. The alteration which has been made in the wording of the section does not carry out the intention of the Council, and I will see that it is properly carried out before the Bill is finally passed. It has been settled by the Council that section 11 will be amended as follows, namely, that the number of members who are to be present at a special meeting of the District Board, when a preliminary scheme is adopted or rejected, shall be not less than one-half of the whole number of members on the Board, and that the votes of not less than two-thirds of the members so present shall be necessary to the adoption or rejection of the scheme when they overrule the opinion of the Drainage Commissioners."

The Hon'ble MR. LYALL's amendment in sub-section (2) of section 35 was put and agreed to.

The Hon'ble MR. LYALL said:—"In moving that the Sanitary Drainage Bill be passed, I desire to place before this Council, as shortly as possible, a

history of the Bill I now ask should be passed, and to state what advantages may be expected from the passing of such a Bill.

"The Bill, as the Council are well aware, is one of the results of the Belvedere Conference held so long ago as the 18th July, 1892. The resolutions then passed have been carried out so far as municipal areas are concerned in the additional sections 37A to 37K embodied in Act IV (B.C.) of 1894 which was passed last year. These sections enable action to be taken when the initiative is assumed by a municipal body, and provides for the joint action of the local authorities having jurisdiction over rural areas.

"The Bill now before us is the counterpart of that Bill, and provides for the initiative being taken by the rural local authority.

"It has been before this Council since the 9th of February 1894. It has been twice referred to a Select Committee and has been twice criticised by every public body in Bengal. The Bill as now amended differs in many details from that originally laid before Council, but its scope is the same.

"I do not propose to detain the Council by going into the details of the Bill, but there are a few points to which I would desire to draw notice. The first is the initiation of the scheme. This point has been the subject of much discussion. At the Belvedere Conference the majority were in favour of leaving the entire decision to the District Board, and this has been carried out in the Bill now before us, but combined with provisions which enable local public opinion to be fully consulted.

"Local interests are further safeguarded by the appointment of local representatives as Drainage Commissioners. If local opinion is against any scheme, it can only be adopted by the District Board at a special meeting at which at least half the number of the Board are present and by a majority of two-thirds of this number. Even after this, the Local Government has the power of veto. I was one of those who voted in the minority at the Conference, and I hold that the safeguards provided in the Bill are ample to prevent the possibility of a scheme being carried out contrary to the wishes of the people concerned and who will have to pay for it.

"I desire in the next place to say a few words regarding the probable working of the Bill after it has passed into law. I have seen fears expressed that officers enthusiatic for sanitation will propose schemes costing much money and involving a hopeless contest with the forces of nature.

"I think the Council need have no fear of such results. In the first place there would be strong, and probably successful, local opposition to any such scheme, and even if such a scheme did come up, the Local Government would certainly veto it.

"But when rivers change their courses under the operation of natural causes, and the old courses cease to be main drainage channels, people are apt to forget that these channels had a double duty to perform, and that in addition to being main drainage channels they were also local drainage channels. The beds of these dead rivers generally become fit for cultivation, and the greater part can be cultivated without danger, but the ordinary zamindar, talukdar, or raiyat knows little or nothing of the functions which the bed of the river still has to perform, and in such cases we generally find that the whole bed is cultivated.

"The result naturally is impeded drainage and deterioration in the public health, and until now there has been no law under which this action could be prevented. The Penal Code in section 268 requires that in order to constitute an offence the damming of small streams must cause common injury, danger, or annoyance to the people in general or to individuals. Now, injury to public health is not the immediate result of damming a river or cultivating its bed; the result follows slowly, probably years after, and the High Court decided in the Chittagong cases in 1893 that a conviction under section 268 could not be maintained when the result was so remote. The leading case for years as regards the power of the Magistrate to issue executive orders in such cases under the Procedure Code has been the judgment of a Bench presided over by the late Mr. Justice Morris, and when the Belvedere Conference was held that was the leading case, and Magistrates were thus unable to take action either judicially or executively. Since this Bill has been under discussion, I am glad to say that the High Court have come to another decision, and have upheld the action of the Magistrate of the 24-Parganas as regards the Soonti river. Section 27 of the Bill the Council are now asked to pass is therefore in accordance with the latest case law on the subject and makes it clear that a Magistrate has the power to prevent obstructions being placed in drainage channels and to order their removal. At the time of the Permanent Settlement all water-courses were exempted from assessment. The zamindars have therefore no ground for complaint, as they pay no revenue for such lands and in fact gain free of assessment all the land

not required to be kept open for a drainage channel. This principle is to some extent embodied in section 16 of the Bill, and recent encroachments will be removeable without compensation. Where limitation has accrued it is proposed to give compensation under the Land Acquisition Act in force for the time being. The Bill now before Council, though capable of being extended so as to provide for larger schemes, is also capable of being utilized for smaller schemes, and its chief usefulness in my opinion will lie in its judicious application to such schemes. In fact, I look on it as mainly a Bill to prevent the further deterioration of the drainage of Bengal, and to improve it when it can be done at a small cost, and in confirmation of this view I would point to what has been done in one or two cases and also what can be done. The first case is that of the Soonti river in the 24-Parganas which I have above referred to. The Council are all aware how unhealthy Baraset has become of late years, and in 1883 an elaborate scheme under the Drainage Act for the drainage of the Dhokera Bil and the improvement of the Soonti and Nonye rivers was drawn up, the estimated cost being Rs. 4,78,068. The proprietors very naturally would not agree to this, and the scheme was dropped.

"On receipt of letter No. 894, dated the 13th March 1893, from the Sanitation Branch of the Bengal Office, the Magistrate of the 24-Parganas undertook a series of petty improvements in the Soonti river. In the year 1893-94, nine miles of the bed were cleared by the removal of 40 bunds and fishing weirs and the clearing of trees and other obstructions from the channel. The cost was Rs. 1,039, of which Rs. 400 were paid by the Baraset Municipality and the balance by the District Board. In the following year, 1894-95, a further distance of ten miles was similarly cleared at a cost of Rs. 938. The District Engineer reports, under date 22nd June, that 'the health of the locality had much improved, and the water of the nadi which was filthy before is now used for drinking purposes,' and again he says, 'the drainage of the adjacent tract has much improved, and the villagers alongside now enjoy better health.' This is an instance of what has been done executively and without a law such as we are now asked to pass, but the Council must remember that the success or otherwise of the action of the Magistrate entirely depended on the view taken of it by the High Court, and that had the old decision of Mr. Justice Morris been upheld, the Magistrate would have been powerless. The law the Council are now asked to pass will place the legality of such action beyond doubt, and

I hope to see many such schemes worked out by the joint voluntary action of District Boards and Municipalities, and without additional taxation.

"The Eden Canal is an instance of more extensive works, which the Council are no doubt all familiar with, and I need only say here that the opening of that canal and the improvement in the drinking water and drainage effected by it were followed by a marked amelioration of the health of the places on the river bank.

"There are many places in Bengal where improvements can be carried out on lines similar to one or another of the two cases just mentioned. I hold in my hand a paper which has been circulated to all members of Council containing a note by the late Magistrate of Dinajpur, Mr. Tute, showing how the drainage of that very malarious district can be improved at a very small cost following the lines of the action taken by Mr. Collier in the case of the Soonti river. Another scheme about to be carried out by the Irrigation Department at the joint expense of the Local Government and the District Board is the canalisation of the dead river Kausiki in the Hooghly district. This is more on the lines of the Eden Canal, and will be supplied with water from that source. This is another case where the work will be carried out without taxation at the joint expense of Government and the Local Board, and no doubt many similar cases will occur.

"I do not propose here to say more than a very few words on the subject of the assessment of cost. That was fully discussed a fortnight ago. That discussion has been the subject of considerable comment in the press, and the Government of Bengal and this Council have been twitted with their inability to devise a collecting machinery which will secure the realisation of the costs of the scheme from all who benefit, but none of our critics have supplied us with a better scheme. We assert that the number of those who will benefit by any drainage project who do not pay Road Cess is so small that the amount they would pay under any of the alternatives proposed would be more than swallowed up in the cost of collection. The rate, it must be remembered, is a temporary one, extending at the outside to 30 years; and Government has rightly declined to establish a new collecting machinery for a temporary purpose when an existing machinery existed capable of doing the work easily and cheaply, and with a minimum of annoyance to those who pay.

[*Mr. Lyall; Maharaja Sir Luchmessur Singh Bahadur of Darbhanga; Mr. Risley.*]

"I do not, Sir, expect any great or sudden changes from the passing of this Bill. Just as the deterioration of drainage takes time, and its effects on the public health are not felt for years after the mischief has begun to act, so the improvement of drainage will, in most cases, be a work of time, though experience has shown that improvements have a more rapid effect than impediments.

"The passing of this Bill will place a strong weapon in the hands of those responsible for the health of the province—a two-edged sword in fact which will cut both ways,—in one way to facilitate the removal of existing obstructions, and in the other to prevent new obstructions being created.

"I do not anticipate any extensive use of the penal clause of the Bill. The fact of the existence of such a clause will have the effect of preventing the obstruction of drainage in the future.

"I ask the Council to pass this Bill, not as a perfect Bill, but as an honest attempt to do all possible to reduce the malaria which is the bane of the alluvial districts of Bengal by removing to some extent one of the chief causes of that malaria."

The Hon'ble MAHARAJA SIR LUCHMESSUR SINGH BAHADUR OF DARBHANGA said:—"I beg leave to move that this Bill be referred back to the Select Committee, or at all events that the final consideration and passing of the Bill be postponed for three months. The hon'ble member in charge of the Bill has admitted that the Bill itself is not a perfect Bill. Well, nothing in this world is perfect, but I think if some little time were given to local bodies to submit their opinions upon the revised Bill, we shall be getting a little nearer pefection than we are at present. The Bill has been so altered by the Select Committee that I think no harm can possibly be done by our delaying the passing of the Bill for a period of three months. No scheme of drainage can be taken in hand during the rainy season, and if any schemes of drainage or for the clearing out of silted rivers are in contemplation, they cannot be taken in hand before the cold weather; so that practically there will be no harm done to any scheme whatever by postponing the discussion upon this Bill for three months."

The Hon'ble MR. RISLEY said:—"With your Honour's permission, I will take this opportunity of examining certain allegations which have been made regarding the supposed moral obligations of the Government in respect of the financial portions of this Bill. These allegations have been made

and answered before. I wish I could think that they would not be made and answered again. Still, as memories are short, shorter perhaps here than elsewhere, and circumstances change, more rapidly perhaps here than elsewhere, it may be well that I should answer them again, framing my answer to fit the present state both of the facts and of the law. I take them in the form in which they were put forward by the Hon'ble SURENDRANATH BANERJEE at the last meeting of Council but one. He said: 'The proceeds of the road-cess have been charged with works which formerly had been carried out either from Imperial or from Provincial Funds.' As a statement of fact that is beyond criticism; it describes precisely what has happened. I may add that it describes what ought to happen, and what must happen if the natural development of the country is not to be artificially retarded. The imputation underlying the statement that Government has by some juggle unfairly shifted a financial burden, is absolutely without foundation. Let me go back 15 years, to 1880, when what is now the Cess Act was under discussion in Council. The Hon'ble Kristo Das Pal then moved that a proviso should be added to the Bill to the effect that no work then charged to Provincial Funds should be made a charge on the District Road Fund. In opposing that motion, which was negatived without a division, the hon'ble Mr. Mackenzie said several things which deserve to be remembered. He pointed out that the motion would restrict the administrative discretion of the Lieutenant-Governor, who was 'not as yet reduced to the position of a much-badgered Chairman' of a Corporation, and that it was inconsistent with the fact that although for various reasons the management of certain sources of revenue is transferred to local bodies, the ultimate responsibility for local taxation rests with the Government, and in the last resort it must determine whether any particular charge is equitable. I commend what was said on these questions of principle to all those who hold with the hon'ble member. For my present purpose it is sufficient to dwell on another point. In the speech I am quoting, Mr. Mackenzie said it was impossible to draw a hard-and-fast line of distinction between district roads and provincial roads. He went on to enumerate the chief roads then recognised as provincial. They were the following:—

1. The Grand Trunk Road to the North-Western Provinces and its branches.
2. The Orissa Trunk Road and its feeders.

3. The Chota-Nagpur system.
4. The Calcutta and Jessore Road.
5. The Calcutta and Diamond Harbour Road.
6. The Ganges and Darjeeling Road.
7. The South-Eastern Trunk Road, Dacca to Chittagong.
8. Certain Calcutta roads.
9. Certain frontier roads.

He added: 'There is, so far as I know, no present intention of reducing their number or of transferring them to District Committees; but there is hardly any of the first eight of the series that might not, as regards some part or other of it, form a perfectly fair charge on local funds.' That was 15 years ago, but things have moved so fast, that by the present time the whole or large portions of several of these roads have already been transferred to local bodies, their place having been taken by railways, and as soon as other projected railways are open the remaining roads will go the same way. In each case of transfer, however, a sufficient grant has been made to the District Boards or Road Committees to enable them to maintain the roads to the extent required for local purposes. Now suppose Kristo Das Pal's motion had been carried, what would have been the result? The Government would have been unable to transfer the control of these roads, nor could it have made any grants for their maintenance. For through communication they would have ceased to be of any use; for local purposes they would still have been of great value. The Government would have been in the hopeless dilemma that it must either keep up great lengths of road running parallel to railways, and not wanted as main lines of communication, or else it must allow those roads to fall to pieces. That it should have maintained them or rather bits of them, as *local* roads is obviously out of the question. It would be absurd and intolerable that Government should keep up an establishment, alongside of the district road establishment, to look after a number of scattered sections of local roads, because its hands were tied by a ridiculous proposal. In a word, the principle 'once a provincial road always a provincial road' which Kristo Das Pal endeavoured to introduce, and which the hon'ble member has recently attempted to revive, would have produced great administrative inconvenience and great waste of public money. It would have been an obstacle to the advance of Local Self-Government, and, what is worse, immeasurably worse, it might even have hindered the development of railways. There is literally nothing to be said for it from any point of view.

[*Mr. Risley.*]

"In connexion with this question of the road cess, a second allegation has been made. It is said that in a certain despatch the Duke of Argyll laid down the principle that 'the road cess, which was levied on villages, should be primarily devoted to the sanitary improvement of those villages.' The Hon'ble Member describes this despatch as a memorable document. So it is, though perhaps, hardly for the reason assigned by the Hon'ble Member. I will read the entire passage.

22. "* * * * I have already pointed out that the purposes to which a tax may be applied cannot be considered as affecting the abstract right of the Government to exact it. But assuming this right, everything as regards the policy and even the justice of the rates now in question, turns upon the manner in which they are to be expended. It is, of course, essential that the Government of India should be itself satisfied that it is breaking no faith in any measure it may take; but next to the necessity of this assurance is the necessity, or at least the great importance, of making the same conclusion plain to the apprehensions of the people. For this purpose it is, above all things, requisite that the benefits to be derived from the rates should be brought home to their doors,—that these benefits should be palpable, direct, immediate.

23. The making and improving of wells, tanks and other works of irrigation affecting comparatively small areas of land, are the operations which probably best comply with these conditions. But roads are a first requisite in the improvement of every country, and although as yet they may not be equally valued by the people, it is the duty of the Government to think for them in this matter, and the benefits they must derive will yearly become more apparent to themselves." * * * *

"I must say, taking that passage as a whole, I cannot think its purport has been correctly understood by the Hon'ble Member. The writer of the despatch is clearly trying to put himself in the position of the Indian agriculturist as he conceives him. He says therefore in effect—petty irrigation works are best calculated to make the raiyat see that he gets something for his money. 'But,' he goes on, 'roads are a first requisite.' In fact, what the Duke of Argyll says is that the road cess should be primarily devoted to roads, though it might be politic to spend something on irrigation. About sanitary improvement there is not a word, nor would one expect to find much in a despatch of that date.

"I have shown, Sir, that the Duke of Argyll did not in fact say what the hon'ble member says he did. But even if he had said that, I do not see that it would have made any difference. A famous legal member commented once on the state of chaos that had arisen in a certain non-regulation province from

the practice of legislating by executive order. An even worse chaos would set in if specific provisions of laws in force at the present day were liable to be modified by casual suggestions thrown out in despatches a quarter of a century old.

"The above remarks dispose of the allegation that the receipts on account of road cess are diverted from their legitimate objects. Those receipts have now in most districts become merged in the District Fund under the provisions of the Local Self-Government Act, and no separate account is kept. The following statement, however, shows that the cost of such large drainage schemes as are specially contemplated by this Bill, could not be met from road cess collections. The figures are for 1893-94 :—

			Rs
Net collections of road cess			37,36,000
	Rs.		
Expenditure, district roads	37,02,000		
„ on improvements, including water-supply.	2,47,000		
Total			39,49,000
Deficit			2,13,000

"So far, then, as road cess is concerned, the reply to the hon'ble member's statement is, first, that there has been no unfair transfer of Provincial roads to the control of local bodies; that such transfer is the natural, reasonable and inevitable consequence of the development of railways; and that when such transfers have been made, grants of the necessary funds have also been given; secondly, that the Duke of Argyll did not lay down the principle that village sanitation was a first charge on the road cess; and thirdly, that the cost of any far-reaching and expensive drainage schemes which may be stated under this Bill cannot be met from the proceeds of the cess because the local authorities who administer the cess cannot spare the money.

"I now turn to a second allegation. It is said that when the Public Works Cess Bill was introduced into this Council, the Hon'ble Mr. Reynolds stated that the proceeds of the cess were to be devoted to meeting famine charges and certain other extraordinary public works charges which he specified. It is

alleged that after meeting those charges there is an annual surplus balance of nearly eleven lakhs, which is now spent on ordinary public works, but which might be applied to meet the cost of drainage schemes under this Bill. Now, this allegation assumes three things—

(1) that there is a separate account or fund of the public works cess;

(2) that this fund has a surplus;

(3) that it is open to the Government to apply this fund to the execution of drainage schemes.

"None of these assumptions are correct. There is no such fund; if there were, it would not show a surplus; if it did, that surplus could not legally or equitably be spent on drainage schemes. Here again, I fear, I must go back to matters of history—of rather ancient history. In the first place, Mr. Reynolds's speech of 31st March 1877, made when asking leave to introduce the Bill, is not the most authoritative, nor is it the most distinct exposition of the scope of the measure. Sir Ashley Eden described the Bill more fully and more precisely in his speech of the 7th April, when he spoke of it as 'a measure for raising a further sum of money for the general development of works for the benefit of the whole of the Provinces.' The Bill was to do two things. It was to assist the famine finance of the Government of India by relieving that Government of the charges for interest on certain specified works. It was also to extend the policy of financial decentralisation and to enable the Provincial Government to accept the responsibility for the maintenance of public works, existing and future, in the same way as it is responsible for other branches of the administration. Mr. Reynolds went very fully into the first object; he touched on the second very lightly. Sir Ashley Eden, in the speech which I have quoted, brought out both points at length, and the preamble and subsequent sections give legal expression to what he said. The preamble runs thus: 'Whereas it is expedient to empower the Lieutenant-Governor of Bengal to levy a cess on immoveable property and to apply the proceeds of the same to the construction, maintenance and charges of Provincial Public Works.' The question arose again in 1880, when the Hon'ble Kristo Das Pal moved an amendment to section 10 of what is now the Cess Act, which would have restricted expenditure on Provincial public works to works 'likely to protect the country against the occurrence of famine,' and would further have required the publication of an account. This

amendment raised precisely the same issue that the hon'ble member has raised now. Kristo Das Pal said that the proceeds of the cess were 35 lakhs and the interest charges 27 lakhs, and he wanted to know what had become of the balance of eight lakhs, just as the hon'ble member now wants to know what has become of the balance of nearly 11 lakhs. On the figures then put forward, Mr. Mackenzie replied that for the year 1879-80, the net receipts from the cess were estimated at 34½ lakhs, while the payments on account of interest came to 37 lakhs. For the next year, the estimate of receipts was Rs. 32,71,000, and the interest charges Rs. 36,56,000. The balance, therefore, did not exist. On the figures now put forward, though the circumstances have in some respects changed, I have to give substantially the same reply. Taking for convenience sake the figures of the accounts of 1893-94, the results they show are the following—

		Rs.	Rs.
Net collections, Public Works Cess		...	40,54,000
Net receipts, major canals		..	2,17,000
Total receipts		...	42,71,000
Interest on capital outlay, major canals ...		...	24,60,000
Maintenance, minor canals		...	5,63,000
Expenditure on Provincial roads.	By Public Works Department	10,18,000	13,53,000
	By District Boards ...	3,35,000	
			43,76,000

"I say the circumstances have changed. They have changed in that the railways now pay their way, and the Provincial revenues have no longer to pay the interest on the cost of constructing them. But while the charges for interest on railway capital have disappeared, the expenditure on Provincial roads has increased. This is a legitimate charge on the cess just as much as railways. Both are Provincial public works; both form part of that machinery for distributing the food-supply of the country which constitutes the real protection against famine. A railway without roads is useless. It is like an omnibus without a conductor. The one involves the other: railways imply roads. For a long time past the authorities of the various railways have pressed this matter on the attention of Government, and it has recently been taken

up systematically on the lines laid down in the Public Works Resolution on feeder roads to the Eastern Bengal Railway system, which was published in the *Calcutta Gazette* about the middle of June last.

"It follows from the fact that one main purpose of the Public Works Cess was to bring about an extension of the principle of Provincial decentralisation, and to enable Bengal, as Sir Ashley Eden put it, 'to use a little of its own milk,' which it had been contributing for the benefit of other provinces, that the idea of a separate account ceases to be practicable. The provision to this effect got into the Act of 1877 by a mistake and failure to realise the conditions of the case. It was never acted on, and it was abandoned in the Cess Act of 1880. As Sir Ashley Eden said in speaking on that Act, the fact that the money spent on public works largely exceeded the receipts from the cess was of itself a sufficient account. The receipts for Public Works Cess, like any other receipts, are merged in the Provincial revenues, and go to make up the resources which the Government has to administer. Towards the end of the financial year, when the budget is being prepared, the Government is beset with demands for money. It is by that time in a position to make an estimate of its ways and means, and it has to decide between many conflicting claims. To restrict its action by cutting up its receipts into so many separate sums and laying down that each sum shall be applied only to certain purposes would create infinite confusion, and would render administration impossible. Instead of one balance there would be a dozen, and no one would be able to say at any particular moment how the Government stood or what they were in a position to spend. The true test is to see how the available resources are administered; whether reasonable demands are met; and how conflicting claims are dealt with. For the present, all the public have to look to is that the Government spends on Provincial public works as much as it gets from the cess, and that is clear enough without a special account.

"I have shown, Sir, that there is no separate account of the Public Works Cess; and that if there were such an account it would not show a surplus. But even if this were not so, even if the receipts from the cess were greater than the expenditure incurred on objects properly chargeable to it, it would still be out of the question that drainage schemes under this Bill should be paid for from the Public Works Cess. Such drainage schemes must necessarily be local

works in the strictest sense of the word. They will affect only part of a district, perhaps parts of two or three districts, but it is inconceivable that they should be extensive enough to be properly chargeable against receipts which are set apart by statute for the execution of Provincial works. The Bill as it stands, goes as far as it is possible to go in the way of lightening the temporary burden which a drainage scheme may impose upon the people of the locality affected. It provides that Provincial funds and District funds may contribute to the cost of such schemes, but the main payment must be made by the people who are benefited by the scheme. This I submit is in accordance with the natural equity of the case.

"I turn to the representation of the British Indian Association submitted the other day. I am compelled to say that this letter is not up to the traditions of the Association. Considered as a piece of criticism it is a very poor bit of work, a thing of shreds and patches, and what is more you can tell if you choose to take the trouble where the patches come from. In the first paragraph the Committee assume a pathetic attitude. They grieve to find that far from modifying the Bill so as to remove objections, the alterations have made it worse. That sounds dreadful, but it is only a stock sort of phrase, which bears no relation whatever to the facts. One most important change has been made. The power of taking the initiative, of bringing this terrible engine to bear, has been transferred from the Government to a representative body—the District Board. Government cannot move a step of its own motion. And even when a scheme has been accepted by the Board, the power of modifying the scheme, which the Bill as amended by the Committee gave to Government, is restricted by the proviso, that if Government modifies a scheme so as to add to its cost, the District Board shall have a chance of rejecting it.

"Now take paragraph 2. Can anything be more crude than the fashion in which the Association lump together a number of Acts with no attempt at serious argument? I have dealt with the Cess Act and the Local Self-Government Act already. The others may be disposed of in a word. As to the Drainage Act VI of 1880, I reply in the words of my hon'ble friend Babu Surendranath Banerjee that, 'the proposed legislation has nothing to do with agriculture. The Drainage Act is for the improvement of the soil. What is now proposed is for the benefit of health.' I cannot put the matter more tersely than that. As for the Embankment Act II of 1882, it is true indeed that section

7 (4) enables the Collector, subject to executive control, to make any sluice or watercourse, or to alter any public watercourse for the improvement of the public health, and section 54 enables him to recover the entire cost from the zamindars of the estates, leaving them to recover from their subordinate tenure-holders the proportionate sums allotted on them. Can this possibly be the procedure the Association wish to recommend? If so, their taste is remarkable. I wonder what they would say if they were taken at their word. They might chance to find the Collector's little finger thicker than the loins of the District Board. Paragraph 3 may pass for the present. I shall have something to say about it later on. Paragraph 4 is curiously inaccurate, and I must say I cannot understand how any one can make positive statements of this sort without the smallest attempt to verify them. I consider that both the mover of the Bill and I myself have something like a grievance on this subject. At the Belvedere Conference both of us advocated and voted for a system which would have left the decision with the residents of the locality affected, but the majority of the Conference, headed by BABU SURENDRANATH BANERJEE, held that the District Board was a thoroughly representative body, and that it ought to decide whether any particular scheme should be carried out. It was also pressed upon by the Hon'ble SURENDRANATH BANERJEE that compulsion was necessary, and that the people must be saved from themselves. For a reply to the allegation that the people do not want drainage, I refer again to the same high authority whose name, I am confident, will go down to a grateful posterity as the true author of this Bill. At the Conference he produced a map of opinions on the subject specially collected by him, and all of them, with hardly an exception, were loud in favour of drainage. I will not read the passages. Any one can verify my statement for himself.

"Now for paragraph 5. I do not wish to appear too critical, but I cannot help doubting whether snipping bits out of newspapers is quite the best way of composing an official letter, though it may be the easiest. That is the history of the curious statement that, according to the last census, barely half the population were connected with agriculture. In point of fact, the occupation tables of the census show about 78 per cent. of the rural population to be engaged in agriculture. But this really understates the case, for the simple reason that people whose caste occupation is non-agricultural, but who also cultivate, get recorded as non-agriculturists. The settlement reports will show

how the matter really stands. In Muzaffarpur it will, I think, be found that the entire rural population is more or less interested in land; and a few detailed cases such as which I quoted the other day from Munshi Nundji's report on the Mullarpur settlement in Birbhum are quite convincing. To the latter portion of the paragraph there is a double reply: first, that where you proceed on the principle of local option, the argument of infringement of vested rights simply does not apply; secondly, that if this were not so, the question of the right of the Government to impose a rate was settled once for all in 1870 by the very despatch of the Duke of Argyll which my hon'ble friend described as a memorable document. In fact, the claim of the zamindars amount to this. Because they get off with an absurdly light assessment under one class of taxation, they make the preposterous claim to exemption from all taxation; and in this particular case they demand exemption from a temporary tax which only comes into existence by the will of the representatives of the persons who will pay it.

"In conclusion I will add a few words about the relation of malaria to drainage. Malaria occurs all over the world—not merely in India; its very name, malaria, bad air, is an Italian colloquial word introduced into English medical literature by Dr. McCulloch in 1827, expressing the popular belief that the bad air and noxious exhalations of marshy places cause a certain fever, the symptoms of which are everywhere the same in temperate or tropical countries. As to the cause, many authorities are of opinion that it is due to a special organism, an amœba discovered by a French doctor working in Algeria. There is a large body of opinion in favour of a specific cause as distinguished from mere alternations of heat and cold; and a waterlogged soil is peculiarly favourable to the production of this cause.

"All this theory, however, is really beside the point. If we were to wait till doctors had found out causes before we took steps to avert consequences, we should wait a very long time. There is ample evidence to show that the unknown cause of malarial fever—whatever it may be—is as a rule associated with stagnant water, with the obstruction of natural drainage. Not with water as such or with marshes as such, but with water which is dead. Where the water is moving and alive—though it may move too slowly for you to see it move—there you have no malaria. Raja Digambar Mitter pointed out this long ago, and Eastern Bengal is a standing illustration of it. There is a famous case of

the same kind in Europe, the country known as the Spreewald, or jungle of the river Spree, round about Berlin and Potsdam. A queer 'amphibious country' as Carlyle called it. The villages there are all situated on lakes or bils in the middle of jungle. It is all water, creek and khals everywhere; people go to church and children to school in boats. But though you can see no stream, the water is alive, not dead. There is no malaria, there never has been, and the physique of the people is splendid.

"Further west in districts which form part of the same great plain, where the physical conditions are the same, but there is really less jungle and fewer marshes—in the west of Schleswig—Holstein, in Oldenburg, Westphalia, and the north of Hanover—the drainage has been obstructed by the silting up of khals, and there malarial fever is endemic. The khals have silted up by reason of the dykes made to keep out the sea. They have a most elaborate system of embankments, just as we have in Midnapore and elsewhere, and it is admitted that the dykes have blocked the drainage. Much the same state of things prevails in parts of the Rhone valley, in the Charente south of the Loire, on the coast of Holland, and in many parts of Italy. In the lower basin of the Danube and the valley of its tributary, the Theiss, malaria is so bad that about half the population suffers from it regularly, and the Dobrutschka, the actual delta of the Danube, is almost uninhabitable from fever.

"Everywhere the cause is the same—obstruction of drainage; everywhere the fever is exactly what we know here, and, I may add, wherever drainage works have been carried out so as to restore circulation and set the water moving, there the fever has disappeared. You do not want to drain the place dry; all you want to do is to remove the condition of stagnation. This is what has been done in the fen districts of the eastern counties of England, where until quite recently malarial fever was endemic—it was always there. This was a district very much like the Berlin country which I have mentioned, only with this important difference—that the water was stagnant. Every one suffered from malarial fever, just as people do in Bengal, and curiously enough they used the same remedy—they took opium. Within recent memory the district has been drained; the fever has absolutely disappeared; the fens are now as healthy as the Berlin country, which is one of the healthiest in Europe. The water is still there, but it moves and does not stagnate; it is alive instead of being dead; and the district instead of being avoided as deadly is now a favourite

pleasure resort in summer. People come from all parts of England to sail and fish on the Broads, as the great bils are called, which used to be perfectly fatal in the summer, at the very time when they are now full of tourists. The same sort of thing has been done in Romney marsh in Kent, in the Somersetshire marshes, in France, in Holland, and in Italy; and wherever it has been done the fever has vanished or has been greatly reduced. That is the experience of Europe in respect of malarial fever, which, I repeat, is the same all over the world. I have referred to this foreign experience at length for two reasons: (*i*) because drainage has been tried and its results can be seen; (*ii*) because the phenomena in Europe enable you, so to speak, to isolate the cause and bring out the connection of malarial fever with obstructed drainage. The climate there does not of itself tend to produce fever. It takes a special cause to do that, and you can see what the cause is. In this country the question is more complicated, and arrested drainage is only one of the causes. It is this complication, this presence of many possible causes which has obscured the subject in this country. Some people have laid stress on one of these and some on others.

"The great advocate of the drainage theory was Raja Digambar Mitter, attempting to show that the railways and the roads were the sole causes of obstruction. Others brought into prominence the impurity of village sites; others the use of bad water; others again poverty and bad food. Now this last is certainly not a cause *per se*, though it may contribute to disease by weakening people. Also when drainage has been spoken of there has been much confusion of thought. Some people thought subsoil drainage was meant, such as you have in fields in England, so as to dry up the rice fields. Others referred to municipal drainage; others to drainage schemes intended to convert large *bils* into dry land. But if you understand by drainage, what is really meant in this connection—the restoration of the natural drainage channels so that the water shall flow and shall not stagnate—there is really no substantial conflict of opinion.

"In the discussion in the Press last year in connection with Sir Charles Elliott's Dacca speech, several well-known names were quoted against the the opinion that malaria is due mainly to obstructed drainage. Dr. Lethbridge was quoted as attributing malaria to poverty, whereas what he really said was that obstructed drainage was the cause. Dr. Greene, quoted on the same side,

was really strongly in favour of the drainage theory. Colonel Haig and Dr. Saunders held that poverty was a factor in so far as it rendered people less able to resist fever. But neither of them regarded it as a primary cause. It must be added that since 1873 when these gentlemen wrote, the mills have developed enormously in the neighbourhood of Calcutta, and the lower classes there are much better off. As for Dr. Lyons, whom somebody quotes, none of us can trace his writings. He has retired. However this may be—whatever may be the truth on the scientific side of the scientific point, there can be no question as to this—that, up to quite the other day, everyone in Bengal was a disciple of Digambar Mitter. Every one believed that drainage was the remedy, and that Digambar was the prophet of drainage. Within the last year they have all been suddenly converted: apparently they see that they will have to pay for what they expected to get for nothing. It does not lie in their mouth to use the arguments which they have used."

The HON'BLE BABU GURU PROSHAD SEN said:—"While I fully appreciate the kind consideration, which, on a previous sitting of this Council, led Your Honour to postpone the final passing of this Bill to this day, I am really sorry that at my first introduction to this Hon'ble Council I have to oppose the motion for the passing of this Bill. I am aware that it has engaged the attention of the Council for about two years, has passed through all its stages and embodies the wisdom and experience of able members whose work, it is the height of presumption in me, to criticise. Yet I have to do a duty, however unpleasant it may be to me, and I shall, with Your Honour's leave and indulgence, state my reasons as briefly as I can as my apology for the somewhat unusual course I have to adopt. The Bill, as it stands with the new cess it imposes, call it a rate or what you please, whether imposed temporarily or permanently, virtually affects the Permanent Settlement under which it was declared that the *jama*, which has been assessed upon the land shall be fixed for ever, and no alteration shall be thereafter made; and the zamindars, their heirs and lawful successors, shall be allowed to hold their estates at such assessments for ever.

"These are the declarations that were made at the time of the Permanent Settlement. I shall not touch on the legal subtleties under which, in spite of the pledge thus given, the imposition of cesses are held justifiable, but it is

clear that it is not alone by increasing the amount of the fixed *jama* that the Permanent Settlement can be broken, but also by imposing a number of cesses or rates. These partake of the character of those *abwabs* which the zamindars were hitherto condemned for imposing on their raiyats. Within the last 20 years an additional burden of taxations on land, being in fact something like 23 per cent. has been added to Government revenue in the shape of Road and Public Works Cesses alone. To our fixed land revenue of three crores and eighty-six lakhs of rupees, we have added eighty-one lakhs of Road and Public Works Cesses. How long will it then take to add cent per cent. Now, whether you add to the Government revenue directly by doubling it, or you double it by the imposition of additional cesses, the result is all the same. Then there is a further view of the case. Within the same period by the imposition of these two cesses alone, not to speak of the other cesses, the zamindars find one thirty-second part of his income from land gone. And as this imposition is on the gross rental, irrespective of the cost of collection and other incidental charges of zamindari management, the percentage or net profit will be nearer to 4 per cent. than 3, or it will be found that one twenty-fifth part of the zamindar's net profit is taken from him as Road and Public Works Cesses. This is again an absolute deduction, whatever increase there may be from time to time in the rents. If we go on adding to the cesses the whole of the zamindar's net profit is sure to go in the course of a few years more. In a book, which created some sensation at the time when it appeared, the way to nationalize or naturalize land as common property, was, just as the water or the air, pointed out to be to impose all public charges on land. Surely the British sense of justice, its respect for vested rights will revolt against such a proceeding and against its result, but nevertheless we may be drawn to that result by imperceptible degrees, and before people would be aware of it.

"It is not for me now to dwell on the advantages that have accrued from the Permanent Settlement, but I have a firm conviction, in which I find the majority of my countrymen share, that that settlement has benefited the people and the State alike, by the increased prosperity which it has brought about in its train and by the expansion which it has given to our other sources of revenue. Bengal counterbalances what it pays less in land revenue by paying more in custom duties and assessed taxes, even if we were not to place to its credit

the increased revenue which it yields from other sources. Anything, therefore, that tends to impair in any way that settlement, my countrymen humbly pray Your Honour's government to avoid. It does not, however, appear why landlords and cultivating raiyats alone should be taxed, while all classes of the community would benefit by the work. That this as an abstract proposition is not equitable, is admitted on all hands. But it is said that this equitable idea could not be given effect to, because there is no machinery existent to equalize the tax in proportion to the benefit conferred. It passes the comprehension of the public how a mighty Government like ours and this Hon'ble Council, which represents the supreme wisdom and intelligence of the land, would feel itself powerless to give effect to its idea of equity, and would have to adopt with thankfulness the solution suggested by an outsider which, however, is no solution at all. I may say that the idea of apportionment according to the amount of benefit conferred is adopted in the Embankment Act II of 1882. I would be the last man to say that a tax which would reach all classes alike, would be a preferable substitute. Taxation in the country has, under the present condition of things, reached its utmost limit.

"Now, if we eliminate the cess, there is, I respectfully submit, nothing new in the Bill, that is to say, nothing which cannot be provided for by the Local Self-Government Act. Part III, Chapter I, Head (*e*) of that Act provides for sanitation, and the Cess Act provides for the construction and improvement of drainage. Part III, Chapter I, Head (*e*) has to be extended to districts where it is not now in force and some rules framed by Your Honour under that Act. And the whole of the present Bill is reached *minus* the cess. In fact, if this view of these Acts be not correct, the District Boards, as their powers stand now, would not be justified at all in spending a pice out of the funds at their disposal for the initial expenses, if a scheme be abandoned as is provided for by section 10 of the present Bill.

"But there is another point which deserves serious consideration. Section 6 of the Cess Act provides that the rates at which the Road and Public Works Cess respectively shall be levied for each year shall not exceed the rate of half an anna on each rupee of the annual value of lands.

"Now, one of the many things for which the cess which is not to be more than half an anna per rupee is the providing or improving drainage, and the supplemental Local Self-Government Act authorises the District Board to

provide for sanitation. This, of course, includes sanitary drainage, and for this as for other works, the maximum of cess to be levied, is not to exceed half an anna in a rupee of rent. I submit that the Cess Act has to be amended and the levy of a higher maximum rate rendered legal before any new Act can be passed.

"Turning to the details of the Bill, I find that section 16 has been so drafted as to override private rights. Lands might have been formed and good title acquired therein by adverse possession for 12 years after 1847. They might have then deluviated and reformed in their old site within 12 years before their acquisition under the provision of this Bill, but the owners will have no right to compensation if they have not been in possession for more than 12 years before such acquisition. Then the holders of estates and tenures are to be jointly and severally liable for the payments of the instalments as apportioned by the Collector, and in default their estates or tenures sold. It does not appear why the provisions of the Cess Act for separation of liabilities have not been incorporated in the Bill, and without such incorporation the present Bill, which purports to be complete in itself except where otherwise expressly provided for as in sections 23 and 24 of the Bill the separation of liabilities after the Collector has once determined the rate and apportioned the liabilities, does not seem possible as section 44 of the Cess Act has not been extended to the cess to be levied under the Bill.

"Then the provision for the summary recovery of contribution from the several shareholders after one of them has paid for them all. Section 49 of the Cess Act does not find a place in the Bill. The result will be that the Collector will look to the most solvent of these owners for the payment of the whole amount and the last shall have no remedy against his co-sharers, unless he sues them in the Civil Court.

"'Agricultural holdings' refer only to lands cultivated, and the zamindars, though they shall have to pay for all kinds of rents including rents of homestead lands, shall not recover a pice from the owners of residential holdings; yet in Bengal there are owners of homestead lands with pucca buildings thereon, the owners of which are neither holders of estates or tenures in the village nor a cultivating raiyat. I am not sure whether it is really intended to exempt these men from the payment of the cess.

"We have then, this:—That the holders of estates or tenures shall have to pay their own debts *plus* the debts due from the cultivating raiyats on pain of having their estates or tenures sold at auction.

"In the Survey Settlement and Maintenance of Records Bill it was proposed that, if the raiyats were not to pay to the revenue authority their quota of debts on demand made, the amount would be recovered from the zamindars; but the raiyats would have to pay him the amount with the addition of twenty per cent. on such debt. Your Honour was graciously pleased to withdraw this provision on the consideration that it involves hardship to the landlords on the representation of HIS HIGHNESS THE HON'BLE MAHARAJA BAHADUR OF DARBHANGA. The landlords under the present Bill get no compensation for their trouble and risk, though there is no difference between the two cases.

"Then, while the Government recovers debts due by the landlord *plus* debts due from the cultivating raiyats by a stringent summary procedure, the landlord, after thus being compelled to pay, shall have to wait for the tardy process of civil suits to recover what he has paid.

"But, in fact, the considerate portion of the landlords shall not recover at all for they know that even the smallest addition to the rents goes to produce considerable harahip to the cultivating raiyats, while the hardest amongst the lots shall, under the name of the legal cess, recover more than what they are entitled to.

"I appeal to Your Honour primarily in the interest of these cultivating raiyats not to impose on them an additional burden of taxation, for in spite of Your Honour's best intentions in their behalf, and in spite of such good intentions in almost all our officials who lead our administrative machinery, these raiyats live a very miserable life indeed with no sufficient food for themselves and their children. Mr. Finucane's report on the experimental survey establishes the fact that the extent of the holding of the raiyat under one or more landholders does not exceed three acres. On an average, on the produce of this small holding live five or six individuals (*vide* the same report). The mean produce of an acre under the most favourable circumstances such as irrigation from the Sone Canal does not exceed 21 maunds of paddy per acre. On a calculation, therefore, it will be found that the average family of this class in Bihar have to live on an income which does not exceed 60 rupees a year. They live in a

wretched hovel worse than cattle sheds; they sleep on bare mats spread on damp ground; they cannot afford to pay for medicines in cases of illness. Perhaps the fault is primarily theirs, it is perhaps their *kismut*, that is not the question here, but I submit with all due respect that it is almost a cruel mockery to tax them in the name of sanitation, when the extra pice should go for the provision of salt, that necessary article of consumption in which they have to stint themselves.

"When the Government has saved raiyats from legal *abwabs* by the stringent provisions of the Bengal Tenancy Act, it does not behove it to impose number of cesses over and above the rent. The burden is all the same. But then it is said that it is a matter of local option.

"It would be a matter of local option if the resolution which your Honour put to the Belvedere Conference had been carried.

"It was to this effect:—'That when an application is made to Government on part of the inhabitants of any tract where malarial fever prevails, or when it is notorious, that there is a high rate of mortality due to the want of drainage, provision should be made by law for ascertaining the wishes of the inhabitants or owners of the property concerned, and if the majority support the scheme, the Government shall be empowered to carry out comprehensive schemes of drainage and to raise from the area affected such funds as may be necessary for meeting the cost of such schemes.'

"According to the Bill, initiative will be taken on the application of a District Board. It will be disrespectful in me, coming as I do to Your Honour's Council on the recommendation of the District Boards, to deny their representative character. Yet I know what they are. There is always a strong body of nominated members. In several districts, all members of the Local Boards, which form the constituency for the election of the members of the District Boards, are nominated by Government under the condition of 'fixed abode' within the jurisdiction of the Local Board. His Highness the Maharaja of Darbhanga, living within a municipality, cannot be elected in any of the Local Boards comprised in his extensive zamindari. The Nawab Bahadur of Dacca cannot be elected for a similar reason. The District Boards are always presided over by an official Chairman. The application again is to be made by one District Board and it can compel others to join it. Local option, therefore, as in the Bill provided, is simply 'to gild the pill of compulsion'—an expression

which is not mine, but which I find used in one of the earliest documents leading to the Belvedere Conference.

"But how are these sanitary measures when necessary to be undertken, if no body was to pay for them? I submit that the only possible method is to press on the Imperial Government the necessity for these good works, and to ask them to show this Government more consideration in the matter of adjustment of the revenues—Provincial and Imperial.

"The difficulty at present arises out of what the people irreverently call the Thikadari system, under which the Imperial Government lay their hands on almost everything they can get and they do not leave you sufficient to carry on the routine of administration much less for works of public utility. Your Honour's government has always the sympathy of the people in the way in which it is treated by the Imperial Government in this matter of finance. It would earn the gratitude of the teeming millions under its sway if it were to set about to resist this tendency, instead of trying to meet its difficulties by falling on weaker bodies by in fact throwing its legitimate burdens on local funds, and where that is not possible by imposing additional burdens on lands, because I speak of outside impressions it is so easy to do so.

"It will be found that Bengal, after paying its legitimate share of the Imperial expenses, will have left enough to look to its own education, to its own medical relief, its famine relief, and host of other administrative duties, instead of encroaching upon these things, as it does now on the District Funds, and the District Funds set free from burdens which ought not to be thereon imposed, shall have enough left to look to sanitation, the primary item of which, I hold in some of the districts, to be the supply of pure drinkable water.

"At least the object aimed at as preventive of malarial fever is a debatable one. The hon'ble member, who has just spoken, has told us that there are various theories as to the causes of malarious fever. We are simply asked to proceed on the opinions of doctors, and the doctors do differ. There are important sections of the community directly affected by the Bill, who protest against it. The silt obstructions may not be possible to be removed after considerable expenditures have been incurred, such a thing happened at Dacca at the beginning of the formation of the District Boards, as the hon'ble mover of the Bill can inform this Council. A dredger was purchased to take away

[*Babu Guru Proshad Sen ; Maharaja Jagadindra Nath Roy of Nator.*]

the silt from the mouth of a river, but the silts could not be removed, and the dredger was found to be of no use.

"Then there are silt obstructions, caused by tidal river, which, even if removed, would form again unless the cut was too deep, in which case there would be the apprehension of the whole force of water running into the new course, thus washing away valuable properties. At any rate, I find from the latest Administration Report that, notwithstanding the additional burdens thrown on the District Funds, the District Boards have at their disposal the surplus of twenty-five lakhs of rupees. Now, when the doctors differ, part of this money may be applied in experimental works of the kind, and, if the experiment prove successful, the Bill may be passed into Act. With this 25 lakhs of rupees in hand the urgency for the legislation against the wishes of the people does not appear to be great even as now half of the expenditure ought to come from the general revenues; for if obstructed drainage is the cause of malarial fever in the land, the obstructions in some places are due in great part to the action of our engineer experts. This is the impression of the people with regard to the construction of railway and this is their impression with regard to the irrigation works also. It has been said that general revenues cannot be applied to especial local works which are contemplated under the Bill, but I submit that there is no reason why people in the locality should pay when the obstruction to drainage has been brought about by Government action.

"For all these reasons, I am sorry I cannot vote for the passing of this Bill. At least there appears to be no reason why the postponement for three months, asked for by the Hon'ble MAHARAJA OF DARBHANGA, should not be granted, and the Bill referred back to the Select Committee."

The Hon'ble MAHARAJA JAGADINDRA NATH ROY OF NATOR said:—"Although I was one of the members of the Select Committee, I am sorry I was not able, owing to my ill health, to help my hon'ble friends in the way of removing some of its most objectionable clauses. I must say that the Bill in its present form is a decided improvement on the Bill as it was originally introduced. Here I feel it my duty to say that the Government is actuated by the best of motives in introducing a scheme like this, and it would have received the unanimous support of the country, if it had contained no provisions for the

imposition of any tax at all—if the Government had come forward with the Provincial and District Board Funds for the construction and the maintenance of the drainage works. Because, as my hon'ble friend who represents the Dacca Division has said, it is impossible that any such schemes can be carried out under this Bill, as the people of this country cannot afford to pay for uncertain sanitation. It is true that some of the medical gentlemen who have been consulted, as experts, have given it as their opinion that improved drainage is calculated to do immense good, but there are others yet, I know, who entertain grave doubts as to the success of the scheme.

"Then again, at the time of the Permanent Settlement, the landholding classes of this country were distinctly assured by Lord Cornwallis that no further tax would be laid upon the land in future. With Your Honour's permission I will read an extract from His Lordship's despatch to the Court of Directors, in which the following passage occurs:—

"'If at any future period the public exigencies should require an increase to your resources, you must look for it in the increase of the general wealth and commerce of the country and not in the augmentation of the tax on the land.'

"The rate which was proposed in this Bill is regarded by the landholding classes as another increase to the tax upon the land. The first was the Road Cess, then came the Public Works Cess, and now a Drainage Cess is proposed. The zamindar class do not know where such sources of taxation will end, and they very justly regard all these cesses as so many encroachments upon the Permanent Settlement. As for myself, I am not in favour of any sort of taxation, but if taxation is at all necessary, why should the landholding classes be singled out for taxation, when the benefits to be derived from drainage will not be confined to them alone?

"Under all these circumstances, I feel it my duty to offer my respectful protest against the passing of this Bill, unless the Council is prepared to refer it back to the Select Committee for further consideration."

The Hon'ble MR. R. C. DUTT said:—"I do not intend at this hour to detain the Council with any lengthy remarks, but I have had the honour of being associated with the Hon'ble MR. LYALL in both the Select Committees which sat on this Bill, and I feel that I am to some extent responsible for the shape which the Bill has taken. I wish, therefore, to say a very few words with reference to the remarks of the last two speakers.

[*Mr. Dutt.*]

"Something has been said about the proposed rate being a new cess in violation of the Permanent Settlement. I wish to point out in reply that the proposed rate is not a permanent cess, that it is not proposed to impose it on the whole of the province or on the whole of any district, and that it is not intended to levy it beyond a limited number of years in any part of the country. It is a rate which will be imposed at the instance of local bodies, within limited areas, and for work of a definite kind, and when the work has been paid for, the rate will cease. It may rather be called a voluntary contribution on the part of the people as represented by the District Boards; it is a misnomer to call it a permanent cess. I do not wish to go into the question of its being an encroachment upon the Permanent Settlement, because it has already been fully answered by the hon'ble member, the Secretary in the Financial Department.

"Then it has been said that the rate will be inequitable, because it will not fall on the classes which will be benefited. To that proposition also I beg to demur. As has already been pointed out, the classes which are interested in land numerically come to something like 80 per cent. of the total population, and if we exclude the population of towns, it comes to about 90 per cent. Of the remaining 10 per cent., a good portion are unfit to pay any tax at all, so that we practically impose a rate on the whole population which will be benefited by schemes undertaken under this Bill. The Select Committee failed to find any more perfect scheme of taxation for the purposes of this Bill, and our critics have not ventured to indicate any such tax. Although not theoretically perfect, I consider that what we have proposed is a practically equitable rate which will fall on the people who will derive benefit from the schemes we contemplate.

"Something has also been said about the re-adjustment of Provincial and Local funds, and it has been suggested that, as the Public Works Cess was imposed for the special kind of works which we now intend to execute, they ought to be paid for out of the Public Works Cess, and not by the imposition of a new rate. To this argument the hon'ble member in charge of the Financial Department has already given a complete reply. But assuming that the Public Works Cess was imposed, not for the construction and maintenance of ordinary Public Works, but for special works which are calculated to save the people from famine and other calamities, then, what should be our attitude with regard to this Bill? This Bill is a statutory declaration of the intention of the Government to contribute from the Provincial revenues to special works of this nature.

We have had, from time to time, contributions from the Provincial revenues for the improvement of particular localities, but this is the first act of this Council which will lay it down in so many words that the Government of Bengal intend to devote a part of their revenues, with which the Public Works fund has been amalgamated, to special works of this nature. It is a very difficult task to embody such an intention in a Bill, but the framers of this Bill went out of their way to declare it, and the Government permitted them to declare it, in the body of the Bill; and therefore our attitude towards this Bill should be, I think, not one of opposition, but one of cordial welcome.

"Then, some remarks have been made to the effect that the proceeds of this rate will probably be frittered away in making experiments, the results of which cannot be foreseen. I think the remarks of the Hon'ble MR. LYALL sufficiently prove that the schemes which we contemplate are not doubtful experiments, but works the utility of which has been fully proved. The hon'ble member has referred to a number of cases, and I ask permission to add one or two more from the Burdwan Division, with which I am myself acquainted. The two streams, known as the Kana Nadi and the Kana Damudar, were in former times the spill channels of the Damudar, but have now become stagnant. I find it on record that after the construction of the Damudar left embankment, which shut out from these two khals the supply of water they had hitherto received from the Damudar, they became little better than a succession of stagnant and fetid pools. Then followed a series of the most terrible epidemics of fever which Bengal has ever known.

'As soon as it was recognised that the condition of these channels might be responsible at least in some measure for this terrible scourge, Government sought to remedy it. Obstructions which would retard the free flow of water in the channels were removed from their beds, the silted up heads were re-excavated; and, finally, water was admitted to the Kana Nadi in 1873 and two succeeding years. This was followed by an immediate and marked amelioration in the health of the inhabitants. In 1876 and 1877 the supply of water was stopped, and the health of the places along these river banks again deteriorated. In 1878 water was once more admitted, and subsequently works of a more permanent nature, having always as their object the improvement of the sanitary condition of the channel, were pushed forward, and were practically completed in December 1887 when Sir Ashley Eden opened the canal which henceforward was to bear his name. The completion of these works marked the commencement of a new era of prosperity in the Burdwan and Hooghly districts. A supply of fresh water was now ensured to the renovated water courses. The once dreaded fury began gradually to disappear and the health of the inhabitants to rapidly improve.'

[*Mr. Dutt.*]

"This I find from a note drawn up in the Bengal Secretariat from reports submitted long before the present Bill was conceived. Since the opening up of these two channels, the people in the Burdwan and Hooghly districts have become fully alive to the importance of converting dead channels into living streams, and applications have been made from time to time, not unsuccessfully, for having other stagnant channels opened out. Only two years ago, when I was in Burdwan, a respectable and public-spirited resident of a village, in comparatively humble circumstances, prayed for the opening out of a stream which formerly connected these two rivers, and he came forward with a contribution of Rs. 1,500 to have the stream cleared out. I put the matter before the zamindars who owned the land, and most of them offered to give up the land free of cost. The rest of the cost of construction was provided by the Government, and that little work is now, I believe, an accomplished fact. This is an instance which proves that the people of tracts most affected by malaria are alive to the importance of such works, that they ask for them, and that they are willing to contribute for them. Subsequently to this, another scheme was taken in hand, as I stated a fortnight ago, and as the Hon'ble Mr. Lyall has mentioned to-day, in the Hooghly district; and the District Board asked for a contribution from the Government for the improvement of the Kausiki khal. The Government offered to pay half the expense, and I believe the work is in a fair way of being constructed. Last of all, I may mention that through the kindness of the hon'ble member, the Commissioner of Burdwan, I have information that another scheme has been proposed, and will probably be taken in hand, possibly soon after this Bill is passed. It relates to a number of villages in Purbasthali thana in the Burdwan district which suffered exceptionally from malaria in 1893-94. When I visited these parts in the cold weather of 1893-94, I found that nearly all the villages were suffering very severely from a bad type of malaria, and there was hardly a single house in which some of the members were not suffering, or had not recently suffered. I placed the matter before the District Board for consideration, and the Sanitary Committee of that Board have passed the following resolution:—'In the opinion of this Committee a limited number of unhealthy villages, say 50 adjoining one another, in the unhealthy thana of Purbasthali should be selected and thoroughly drained by the Board at once. This action would probably result in a marked improvement of health on the part of the inhabitants, and with this example the Board would be in a position to enlarge its sphere of

action another year, and would probably be able to obtain a good deal of free or partly free labour from the people themselves when they see the benefit.' That is a very practical resolution. The Board want to begin work on a small scale, and if it succeeds, they will extend the sphere of their operation. All these cases show that the people appreciate the conversion of dead channels into living streams, and that they are coming forward not only with their applications, but also with their contributions.

"I have before me a protest from the People's Association of Faridpur to the effect that this Bill is unnecessary. I hope it will be a long time before the people of Faridpur will find works contemplated by this Bill to be necessary: for they do not suffer from the curse which afflicts both sides of the Bhagirathi. But the cases which I have cited sufficiently indicate that such works are needed in the affected districts, and that the people of these districts appreciate such works, and are applying for their construction.

"I do not think it necessary to quote many opinions upon this subject, but Dr. Coates was quoted on the other side to show that malarial fever is mainly due to poverty. I have Dr. Coates's opinion before me, and the opinion does not support that contention. There are also the opinions of other doctors, and I have in my hand the opinion of an eminent physician, Dr. McConnell, who regards bad drainage as the main cause of the type of malaria which prevails in most parts of Bengal. He says—'*Drainage* has been of the greatest benefit when carried out in malarial districts, and has converted unhealthy swamps into healthy arable land. Ague may be said to prevail in inverse ratio to the successful drainage of any district.'

"I do not think it necessary to multiply opinions, because I believe there is a consensus of opinion that obstructed drainage is the cause of the type of malarial fever which prevails in these parts. And as the people appreciate the works which have been done, and are asking for the opening out of old channels, and have even come forward with contributions for the purpose, the Government have wisely decided that legislation in this matter should not be further postponed. And I consider it also a wise decision to place, not only the initiation of, but the final decision upon these schemes in the hands of District Boards. My hon'ble friend, BABU GURU PROSHAD SEN, has made some remarks about District Boards on which I do not wish to make any comment. But I have myself seen the work of District Boards in many districts, and I think it

fair to state that these Boards represent, intelligently and ably, the views and wishes of the best educated sections of the people, and materially help us in the work of administration. The Government have decided wisely in vesting District Boards with power under this Bill, and I have every confidence, the trust which has been placed in them has not been misplaced."

The Hon'ble MR. A. M. BOSE said:—"While entirely agreeing with my hon'ble friend who has just sat down as to the benefits likely to result from the carrying out of drainage schemes, I very much regret that I am compelled to oppose the motion for the passing of the Bill at the present sitting of the Council. I quite admit that opposing the Bill at this stage is a task not lightly to be undertaken, that there ought to be grave reasons to justify the adoption of such a course, but I would beg respectfully to point out that there are in the present case such grave reasons. My first reason is that, having regard to the effect of the financial clauses of the Bill which are the principal clauses, the most operative sections of the proposed measure, there has not been a case made out for the imposition of a rate or cess, or tax, call it by whatever name it may please the hon'ble member in charge of the Bill to call it. And this objection goes to the very root of the matter. I have read with care the proceedings of the Belvedere Conference; I have gone through the speech of the hon'ble member in charge of the Bill when introducing it, and when subsequently he moved to refer it to a Select Committee, and of other members of the Council; but I do not find anywhere an attempt made to prove the necessity for fresh legislation of the kind here proposed. I submit that it is due to the members of this Council and to the public that a statement of a definite character should be laid before them, pointing out what are the important drainage schemes that are required in the interests of sanitation, giving an approximate or rough idea as to the cost likely to be incurred, and then showing that the financial resources of District Boards, with such help as may be available from Provincial funds, are not in any way sufficient to meet such requirements. It would be a singular thing for a Chancellor of the Exchequer to ask for the imposition of a fresh tax, be it for a temporary purpose or for a long period, unless he at the same time produced a statement of facts and figures showing what the requirements are likely to be, what the advantages are likely to be, and that the existing sources of revenue

can by no means meet such requirements. In the present case that has not been done; therefore as I said, the very basis of this proposal of taxation or rate, or cess, has not been made out.

"I confess there is considerable difficulty in understanding the genesis of this measure. As far as I have been able to follow the proceedings of the Belvedere Conference, three of the resolutions passed at that Conference apply to matters municipal, and one of them only to the question of rural drainage which came up almost incidentally, and had not been even so much as referred to in the Hon'ble MR. RISLEY's note which led to the holding of the Conference, nor was anything said there to show the inadequacy of the present state of things. On the other hand, I attach very great weight to the expression of opinion by a gentleman whose opinion is entitled to the utmost consideration, namely, the then Chief Engineer and Secretary to Government in the Public Works Department, Mr. McNeile, which will be found at page 6 of the Appendix to the proceedings of the Belvedere Conference. I shall first draw the attention of the Council to one matter to make the reference clear. At the present time and under the existing law, there are provisions for sanitary drainage. I need not refer to the provisions of the Bengal Drainage Act, because it may be said that these are intended for the drainage and improvement of land, though, in passing, I may point out that the drainage of marshy areas will have great effect upon sanitation as well. There is in fact an intimate connection between measures calculated to drain land or to open out water communications, and measures of drainage calculated directly to effect sanitation. But without referring to that Act, I may point out that, under section 109 of the Road Cess Act, there is distinct power to spend a portion of the district fund for the purpose of improving drainage; and further in section 79 of the Local Self-Government Act, the same thing is repeated. It is there enacted that 'it shall be lawful for a District Board to take measures for, or to contribute towards * * the construction and maintenance of any means and appliances for providing or improving drainage.' Then there are in the same Act certain provisions under head (E), having special reference to sanitation under which money may be expended, and which make it the *duty* of District Boards, so far as may be possible, to provide for the proper sanitation of their districts. Therefore there can be no question whatever that there are provisions in the existing law by means of which agricultural drainage as well as sanitary drainage may be

carried out. And having regard to this, I place before the Council this expression of opinion from Mr. McNeile to which I have referred. He said with reference to proposed legislation:—

'My own idea is that it will be possible to do a great deal more under the present Drainage Act.' And he goes on to say—'If I am right in thinking we can do what is required under the existing Drainage Act, then it is worth consideration whether it would not be better to pass a special Act now for the particular water-supply scheme which has started this proposal to legislate, and not a general one.'

"It is, Sir, a common-place of legislation, one of its recognized axioms, that it must be shown that all that could be done under the powers already given by the Legislature has been done before fresh powers are given or asked for. As I have said, that has not been done. The burden of proof lies, and lies heavily, upon the promoters of this Bill to show the necessity for fresh legislation, and not only has that burden not been discharged, but not even an *attempt* has been made to discharge it. This appears to me to be a singular and a fatal omission so far as this measure, at any rate its taxation clauses, are concerned. I have already referred to Mr. McNeile's opinion. I must respectfully express my surprise that the instances mentioned by the Hon'ble Mr. R. C. Dutt of drainage schemes which have been successfully carried out by District Boards liberally helped by the Government were cited by him as arguments in favour of this Bill. It appears to me that instead of being arguments in favour of the Bill, they are reasons which go against the necessity for any such Bill. These and other instances which have been quoted, and many others which may be quoted, of improvements in sanitation by means of drainage, show that the District Boards, aided where there is need by Government, are in a position to carry out such schemes. Therefore, until facts and figures are adduced which conclusively prove the necessity for this Bill, I submit with the utmost confidence that there is not that foundation laid which is requisite in all cases of fresh legislation. The general and indefinite proposition that more schemes of drainage can be carried out if there were more funds is not, I need hardly point out, by itself a justification for additional taxation.

"I proceed now to my next point. I have hitherto addressed myself to an examination of the necessity for fresh taxation or rating. Assuming for the sake of argument that this necessity has been made out, let us examine the

principle of the rate which it is proposed to impose. That principle is one that is admittedly not a perfect one. It is not necessary for me to argue that point, because it has been very generally conceded; nor do I propose to go over the ground which has been trod on the last occasion that the Bill was under discussion. But I will, with the permission of the Council, read one passage bearing on this question of class taxation.

"John Stuart Mill, speaking of tax on rents, says:—

'A peculiar tax on the income of any class, not balanced by taxes on other classes, is a violation of justice and amounts to a partial confiscation.'

"In the present case it has been admitted that this taxation, although its object is to benefit all classes of the community, has been imposed on a particular class only, viz., on those connected with land. I have no right to claim the character of a representative of the zamindars; but as a representative, as far as I am, of a larger and, I trust I may without offence say, even a more important class than the zamindars, namely the raiyats, I venture to address a few observations on this point. I admit that the necessity of improving the health of the raiyats is a most important consideration, but it must be shown that this cannot be done by the materials or means of taxation now available, before his poverty is again taxed or the scanty means for eking out a miserable existence is further encroached upon. But it has been said that no practicable means can be devised for imposing a rate on all classes of the affected area. The question has been argued on a previous occasion. I will therefore only say that suggestions were then placed before the Council which might be considered as furnishing the basis of workable schemes. We have Mill's high authority for stating that taxation of this character is partial confiscation and a violation of justice. I mean no idle compliment to the members of the Select Committee when I say that I do believe that if this Bill were referred back to them, with additions to their number if need be, they would be capable of finding a means which would combine even-handed justice and fairness to all classes with practical utility.

"I may also refer to certain opinions from an eminent authority bearing directly upon this point. I do not quote the opinions of the representatives of various native associations and committees, not because they are not entitled to weight—I think great weight attaches to their almost unanimous testimony on the subject—but because it will probably be thought that official experience has

a special value. Bearing that in mind, I may mention that various District Officers—the Magistrates of Nadia, Bankura, Mymensingh, Malda, Noakhali, and other places—have pointed out the injustice of a tax exclusively on land. I will not detain the Council by reading their opinions. I will read just one expression of opinion on that point and no more; and it is an opinion which I am sure the Council will receive with great consideration. Mr. Westmacott, Commissioner of the Presidency Division, writing on the 23rd March 1895 on the Bill as amended by the Select Committee, says:—'To throw the whole cost, or even a large proportion of it, upon the landed interests appears to me most inequitable, and such provision appears to me the most objectionable part of the Bill. I note that the Select Committee have considered suggestions for distributing the cost over the whole population, but have failed to discover any more practical method of doing so than that contained in the Bill. If this is so, I consider that the Bill should be dropped, as the proposed incidence of taxation appears to me unjust. I am most strongly of opinion that taxation should not fall upon the land, but on the population, and I deny emphatically that such population is chiefly agricultural. If benefited at all by sanitary drainage, the agricultural population will not be benefited to nearly so great an extent as the non-agricultural classes, and I cannot consider it just that they should bear the whole cost of it. I have considered such cases as occur to me of obstructed drainage which requires improvement, and they all suggest the view which I have expressed, and if any other cases are suggested to me, it will surprise me if I do not find the same facts as to the classes of the population to be benefited.'

"One remark more before I pass on from this point. I wish to point out the dangerous character of the precedent which is now being created. It is not only for the purposes of the present Bill, but having regard to the effect it will have on the course of future legislation, that I place this consideration before the Council. If at the present time in connection with the present measure when it is admitted that those who will be benefited are the whole population—if in such a case, because there is no machinery for carrying out a scheme of general taxation, the zamindars and raiyats alone are to be taxed—then at some future time when the question of taxation for carrying out some other measure of general benefit is being considered, *e.g.*, the question of an education cess, the same thing will be said which is now being said, and with

greater effect. It will be argued that a tax on the landed interest will be realised with the greatest ease, because the machinery is at hand, that that interest represents the bulk of the population in rural areas, and there will then further exist the precedent created by the present measure. I ask the Council to pause and consider well before establishing this precedent.

"My third reason for opposing the passing of this Bill is this, that there is no statutory obligation laid upon the District Board to make any contribution towards the cost of drainage schemes carried out under its provisions. Section 11 relates to this point, and it provides that the District Board after approving of the preliminary scheme shall deduct from the aggregate amount estimated under section 6 the sums, *if any*, which have been promised as private subscriptions, or contributed by the District Board or provisionally promised by the Local Government. Therefore it leaves it entirely optional with the District Board whether they are to contribute anything in furtherance of the scheme or not. I would point out that there is a special danger which will follow from a provision of this character. District Boards have power now to carry out schemes of sanitary drainage, and they have in many cases exercised that power as we have heard. After this Bill comes into operation, how are the two classes of drainage schemes to be distinguished, namely, the cases which may come under section 79 of the Local Self-Government Act under which District Boards must bear the cost, and the other class of cases in which schemes will be carried out under this Bill when their contributions will be entirely optional? Will there not be a natural tendency on the part of the District Boards—I suppose, however perfect they may be, they will have some share of ordinary human nature in them—to throw the whole cost of drainage schemes on the local area under the clauses of this Bill, rather than proceed under the provisions of the Local Self-Government Act. There will be too great a temptation to adopt this course, especially bearing in mind the fact that the initiation of drainage schemes, and subject to the sanction of the Local Government, the final adoption of them will rest with these District Boards. A provision imposing on the Boards an obligation to contribute towards drainage schemes, besides being just in itself, would insure on their part a greater sense of responsibility in sanctioning and carrying out schemes because they would themselves be bound to pay a certain share of the cost. At the same time there will be this further advantage, that the people of the locality will more heartily co-operate, knowing

that they will be assisted by contributions from the District Board and from the Local Government. In the absence of that obligation they will not know, when a scheme is initiated, whether they are likely to get any help from these sources. In the papers which have been circulated there are various suggestions in regard to this matter; one, for instance, that one-third ought to be laid down as the least amount of contribution from the District Board and a similar contribution from the Local Government, the rest to be obtained from local sources.

"With regard to the financial position of the District Boards, I find that the balance in their hands on the last day of the year 1893-94 was Rs. 17,38,474, and further there was on that date an outstanding balance to be realized—this is with regard to both the Road Cess and the Public Works Cess—of Rs. 14,82,876. Therefore it cannot be said that the District Boards are not in a solvent or flourishing condition, or that they are in a condition in any way approaching insolvency; and it may be added there is in some quarters a feeling that the funds in the hands of District Boards are not always used as they should be. As only one illustration of this I may mention that in a representation submitted to the Council, very pointed reference is made to the fact that large contributions in furtherance of water-works within municipal, *i.e.* non-Board, areas were made by District Boards. I refer to the Arrah and Bhagalpur water-works. On all these grounds I submit that there ought to be an obligation laid by statute on District Boards to contribute towards the cost of schemes under this Bill."

[The Hon'ble THE PRESIDENT, rising to order, said:—"The hon'ble member is referring now to details which it is not the time for the Council to discuss at present, and which the hon'ble member had ample opportunity to consider when the Report of the Select Committee was under consideration. I did not check the hon'ble member from Dacca, although he went largely into a criticism of details, because he had had no such opportunity. Now the Council is discussing the question whether the Bill should be passed, and the only arguments that should now be brought forward are arguments, affecting the general principles on which the Bill is based. This is not the time to discuss amendments which were never moved."]

The Hon'ble MR. A. M. BOSE, continuing, said:—"Having had the honour of only recently joining the Council, the papers connected with the Bill

came to me too late to enable me to give notice of any amendment when the clauses came up for settlement by the Council; and I may be permitted respectfully to add that quite apart from this, the only way to show that a Bill ought not to pass is by examining its main provisions and pointing out their defects, which is what I am now endeavouring to do. A further reason appears from the statement which has been made by the hon'ble member, the Secretary in the Financial Department, as to the expenditure under the Public Works Cess. When the Public Works Cess Act was passed, the proceeds of the cess were intended not only for the payment of interest and working charges upon certain extraordinary public works—extraordinary in more senses than one—but also for the construction of new public works. That being so—a reference has been made to a declaration of Sir Ashley Eden on that point, and I have before me the declaration of Mr. Reynolds when introducing the Bill to the same effect—I submit that well-considered drainage schemes are as important as any other class of public works which are now undertaken from public funds, and ought to receive the utmost consideration from the Government. The obligation ought to be laid by express provision on them to help such schemes. As Mr. Skrine says:—

'It is the paramount duty of Government to secure the health of its subjects; and I think that in every scheme a certain portion of the cost should be met from provincial resources;'

and I may add that in Mr. McNeile's opinion—and there is no higher authority on the subject—drainage and water-supply are even more important than roads on which, as we have heard from the Financial Secretary, more than 13 lakhs of Rupees are spent annually from the provincial revenues.

"In the observations which fell from the Hon'ble MR. R. C. DUTT and from other speakers, a statement was made to the effect that this is really a measure in which the principle of local option is recognized, and much stress was laid on the point. My hon'ble friend in fact went so far as to say that payments under this Bill may be looked upon as voluntary contributions by the people, and therefore the Bill ought to be gladly accepted. I submit that that description of this measure cannot be justified. Section 3 relates to this matter and defines the constitution of the Drainage Commissioners. Under the operation of section 3, though there is a minimum fixed for the number of Commissioners to be elected by the District Board, there is no such minimum as to the number of Commis-

sioners to be appointed from the representatives of the local landed interest; so that out of, say, 15 members of the Drainage Commission, while at least 8 *must* be elected by the District Board, it may happen that as many as 12 or 13 will be elected by it, and only 2 or 3 appointed from among the local representatives of the landed interest. There is absolutely nothing in the law to prevent this being done. I submit that these representatives ought to be secured a substantial position in the Commission before the Bill can be justly described as a measure of local option. But it may be said that after all, the initiation of the scheme is in the hands of the District Board, and the majority of the members of the Drainage Commission will also be elected from among the members of the Board. This raises the important question how far these latter can be said to represent the rate-payers of the district, and still more of the local area, in matters of this kind. I wish to point out that the provisions of the Bill are not calculated to secure local option. I know that I have the sympathy of the hon'ble member in charge of the Bill and of the hon'ble member the Secretary in the Financial Department in this view; for at the Belvedere Conference they wanted the initiation of drainage schemes to rest in the hands of the inhabitants of the locality concerned, and not with the District Board. As to the representative character of District Boards about which there has been some difference of opinion in this Council, without using any arguments of my own, let me place before the Council the following figures which I take from the Government Resolution on the working of these Boards for the year 1893-94, and which will speak for themselves. Out of 794 members of District Boards, only 309 were elected members, or about 38 per cent. But that is not all. Even these 38 per cent. were not elected by the people or the rate-payers themselves, but by the members of Local Boards; and therefore it becomes important to see what is the constitution of these Local Boards. There were in 1893-94 1,222 members of Local Boards, out of which 435, or about 35 per cent., were elected. The facts therefore indisputably stand thus. The majority of members in the District Boards are nominated and *ex-officio*, and even the minority, a little over a third, are elected *not* by the rate-payers, but by a body of whom about two-thirds are nominated by Government. The elective character of the average District Board may thus with mathematical accuracy be described by a ratio which is compounded of these two ratios, or by about one-eighth; and in this I do not take into account

the influence of the Magistrate-Chairman, whose little finger, as we have been very candidly informed to-day by the Hon'ble MR. RISLEY, is thicker than the loins of the whole District Board. Therefore whatever the present Bill secures, it certainly does not secure local option, nor will it realise the dream of voluntary contributions pouring in from the afflicted inhabitants of an affected area. And what adds to the regret is that the present Bill goes in this respect behind the existing Drainage Act of 1880, and the Drainage Act of 1871 which it repealed, both of which secured the majority in the Drainage Commission to landholders in the affected area.

"There is only one other point to which I wish to refer. It is a matter of regret that there is no provision in the Bill giving power to District Boards with the sanction of the Local Government to require contributions from railways, or in a minor measure it may be even from those who are responsible for roads and canals which are shewn to cause obstructed drainage. There is a considerable body of opinion as to the responsibility of railways in causing obstruction to drainage and thereby injuring public health. I will only read the opinion of the present Chief Engineer and Secretary in the Public Works Department, Mr. Odling. He says:—'I think the railway is a sinner in obstructing the drainage of the country. I fully agree that the railways are sinners' (page 9, Proceedings of the Belvedere Conference), and there are other opinions which fully bear that out. Therefore this also is a matter of importance in connection with the motion for the postponement of the passing of this Bill; because if there are obstructions to drainage of a serious character caused by railways, and in a minor degree by canals and roads, there ought to be a power of dealing with matters of that description. Section 11 of the Railway Act of 1890, which may be referred to, is not sufficient for the purpose, and does not confer powers which ought to be taken with the sanction of the Government of India in this connection. I submit that this is another ground why the Bill should be further considered. I will not detain the Council further. Having regard to the fact that no case has been made out for the imposition of an additional rate or the enactment of a new law, that the principle of that rate is unfair and establishes an undesirable precedent for future taxation, that no obligation is laid on District Boards or Local Government to help local areas in the carrying out of drainage schemes, that confusion is introduced in the application by the Boards of their varying and even conflicting powers under the

existing law and under the present Bill in regard to such schemes in the future, that the principle of local option is not recognised and a retrograde step taken in that connection, that no provision is made in regard to railways and other sources of obstructed drainage, I venture respectfully, but confidently, to hope that a case has been made out for further and serious consideration of the measure, and that the Council will not give its assent to the passing of the Bill."

The Hon'ble MAULVI MUHAMMAD YUSUF said:—"At this late hour I do not propose to detain the Council by lengthy observations on the subject of the Bill. Much of what has been submitted to the Council this day belongs legitimately to a prior stage of the Bill, and it is not therefore necessary for me to indicate my views on every one of the arguments addressed to the Council. There are two propositions before the Council; the first proposition consists of the proposal, which has emanated from such a high authority as His Highness the MAHARAJA OF DARBHANGA, to postpone the further consideration of the Bill for three months. As regards this proposition, I have nothing to say. If, after due regard to the whole of the circumstances in connection with the subject, Your Honour will be pleased to allow time, that will be an act of courtesy and favour which will be duly appreciated.

"The other proposition before the Council is the motion of the hon'ble member in charge of the Bill, that the Bill should be passed into law. As regards this proposition, I have to say a word in explanation of the vote I intend to give. There are only two aspects of this measure; the sanitary aspect and the financial aspect. When I took my seat in this Council a few months ago, the measure had made considerable progress; in fact the Bill had already been before the Select Committee for a long time. The Bill was the outcome of what is known as the Belvedere Conference. At that Conference most of what was said was said in favour of the advantages likely to result from the measure: two of the hon'ble members now present took part in that Conference, and their utterances in support of the sanitary measure were forcible and exhaustive to a degree; their anxiety and enthusiasm were such that no delay was to be endured, and the project they said should be put into execution the day after: the enthusiasm continued when the Bill was introduced in the Council. The Hon'ble BABU SURENDRANATH BANERJEE said in the Council, if the measure was a fad, he was a faddist; but he was in every good company, for he was supported by expert opinion of the

greatest authority. It appears to me therefore that as far as the sanitary aspect of the Bill is concerned, there is a consensus of opinion in its favour, and I have not the slightest hesitation in affirming and adopting that opinion.

"As regards the shape which has been given to the Bill by the Select Committee, the result has been placed before the Council by the hon'ble member in charge of the Bill. The Select Committee has improved the Bill in various particulars, consistently with public opinion: in fact, the measure as it is now presented, is pre-eminently the people's measure, and not the Government measure. If there is any objection in a particular case, the District Board has simply not to take it up at all.

"Then as regards the financial aspect of the Bill. It appears to me that this aspect must have been considered in all its bearings at the Belvedere Conference. It required no large amount of political sagacity and wisdom to know, when the Bill was first conceived, that money would be required to carry out its object, and that that money must come from the area in which the Act was to be introduced, and not from any source lying outside the area. The utmost that could be expected from the Government was that it would provide for the least objectionable mode for raising money; that the mode recommended in the Bill was one of the possible modes should have occurred to those who supported the measure at the Conference. And it did occur to them, and still they asked for the measure, which was deemed to be so urgent that they did not say they would have it only under certain circumstances and would not have it under other circumstances.

"The form given in the Bill to the financial question is the best that human wisdom could devise, and it was admitted no other form was feasible. It follows, therefore, that the necessity for the measure was conceded to be so great that the financial shape of the Bill is not to be taken as in itself sufficient to put aside or to defeat the Bill. It fact the death knell of all opposition was sounded at the Belvedere Conference, which gave birth to the measure, and the initial velocity given was so great that it is not now possible to withstand the force.

"But notwithstanding the high authority of those gentlemen under the auspices of whose great name the measure was affirmed at the Conference, and notwithstanding the strong presumption which arises from the measure being stamped with their names, that there could be no serious objection to the Bill,

[*Maulvi Muhammad Yusuf; Rai Eshan Chunder Mittra Bahadur.*]

still if I could honestly and conscientiously believe that the Bill violated some fundamental principle and is radically defective, I should consider it my duty to join in the protest, and to withhold my support from the Bill. But I am convinced that the Bill does not violate such principle and is not so defective. As regards the cry of the Permanent Settlement being broken by the provisions of the Bill, I do not think there is much force in the argument. The President had, at the instance of the Hon'ble R. C. DUTT, consented to certain changes in the phraseology of certain sections, the apparent effect of which might have been to treat and make the rate as part of the revenue or road cess. Under the old section 18, the rate was to be added to the Road cess; under the new section 21, as finally settled by the Select Committee, the rate is to be collected with the Road cess. So that the Select Committee has done its best to maintain the Permanent Settlement in tact and to see that there is no shadow of infringement of that settlement. And quite apart from the phraseology employed in the Bill, it appears to me that there is no infringement of the contract of the Permanent Settlement in this Bill. Without entering into a disquisition of the principles involved in the Permanent Settlement, I say that there would be violation of that settlement if for the same consideration a higher return were to be demanded by the Government; but if the consideration is additional and not illusory, then, as at present advised, there is no breach of the Permanent Settlement. The financial clauses of this Bill do not in any way infringe the conditions of the Permanent Settlement, because its provisions are not framed with the object of increasing the revenue, but with the object of collecting funds to meet the cost of necessary works of sanitation for the benefit of the subject, and no question has been raised that it is the duty of the Government to undertake such works and provide for the costs from the revenues. It is for these reasons that I give my vote in favour of the motion for the passing of the Bill."

The Hon'ble RAI ESHAN CHUNDER MITTRA BAHADUR said:—"I shall not on this occasion give a silent vote. I was one of those who were invited to the Belvedere Conference. I then thought, and I still say, that legislation is necessary for the purpose of improving the condition of villages in rural tracts. This Bill has gone through several stages in Select Committee, and whatever may be the opinion of that section of the community which entertains extreme views, I say that the majority of the people are grateful to Your Honour and to

the hon'ble members who sat in Committee for the concessions made in favour of public opinion. The Bill gives local option to District Boards, it provides that the Commissioners to be appointed under the Bill should have effective control over the scheme; the Bill further makes provision for the joint action of Municipalities and District Boards under certain conditions. These are all salutary provisions which have made the Bill attractive. But it is the financial clauses of the Bill which really are to be looked into, and which I submit have created apprehension and dissatisfaction in the minds of zamindars, tenure-holders and raiyats; financial considerations are in fact everything in a matter like this. Your Honour has received petitions from the British Indian Association and from other Associations on this point. They complain that the Bill makes an attack upon the terms of the Permanent Settlement, and they further contend that there is no necessity for this Bill. As regards the question of necessity I differ from them, I consider that there is necessity for action on the part of the Government; but as regards a breach of the terms of the Permanent Settlement, I do not wish to enter into the question as it has been urged in the papers before the Council, and has been argued by my hon'ble friend, BABU GURU PROSHAD SEN. But whatever may be the view which the Council may adopt, whether it is too late in the day to consider the matter, or whether the zamindars are in a position to complain or not, and even if the Council think that the zamindars are wrong in their contention, I submit that the Bill contains provisions which may be taken to be an invasion of the vested rights in private property; in a country where we find scarcity, if not famine, occurring almost every ten years, where the agricultural classes are maintained solely by the produce of the soil, where the soil itself is not improving, it is a question whether it will be politic, wise and fair to impose another burden upon the landholding classes. Information has reached us from the last Census returns that the agricultural population consists of a little more than half the whole population, and under these circumstances it is of the utmost importance for Your Honour and the hon'ble members of this Council to consider whether a cess, or whatever it may be called, should be imposed upon the landholding classes who I submit are already suffering from severe load of taxation.

"I do not wish to detain the Council after the exhaustive speeches we have heard, but I submit that a Bill like this ought to have a wider sphere of operation; that while it is improper to contend that the whole cost of these schemes should be borne by the Government, I submit it would not be right

[*Rai Eshan Chunder Mittra Bahadur; Babu Surendranath Banerjee.*]

to say that the greater portion of the cost of construction should be paid by any particular classes—I mean the landholding classes. As I have said, I think it necessary that there should be some sort of local rate to carry out the object of this Bill, but such local rate should not be of the nature of the Road Cess, and if it has been found difficult to find out the means of imposing such a rate, that I submit is a very good reason for referring the Bill back to the Select Committee."

The Hon'ble BABU SURENDRANATH BANERJEE said:—"I have a few observations to make upon the motion before the Council. I did not intend to offer any remarks at all on this occasion, but the criticisms of my hon'ble friend the Financial Secretary to Government, call for a protest and a remonstrance from me. It is a very happy sign indeed that an official member in the position of the hon'ble the Financial Secretary should from his place in Council endeavour to defend a measure of the Government against public criticism. It is an expression of homage to public opinion. Might I be permitted to hope that this feeling may be carried a stage further, by the acceptance by this Council of the proposal of my hon'ble friend THE MAHARAJA OF DARBHANGA, so that an opportunity might be given to some of the new members of this Council to consider a measure of this gravity and importance.

"I do not myself in the smallest degree recede from the position I have taken up in regard to this Bill since its introduction into this Council. I still believe that obstructed drainage is the cause of malarial fever, and that malarial fever is a prolific cause of death in these provinces. I have had personal experience of the truth of this statement. Some years ago I went to a village in the Hooghly district which is associated in my mind with the dearest recollections; at one time it was a prosperous and a happy village; now it is a wild scene of desolation; the houses are in ruins; malarious fever has done its work of death. So far, therefore, as this Bill seeks to grapple with this question of obstructed drainage and malarial fever, it is entitled to my unstinted sympathy and support. But it is neither politic nor fair to impose a rate or tax upon any section of the community for the purposes of this Bill. I contend that the Bill is partly a measure of local option. You give the District Boards power to initiate schemes of drainage. You cannot compel or coerce them. It is a matter left entirely to their discretion. Now is it conceivable that any District Board

having any pretensions to a representative character would, of its own accord, initiate a drainage scheme which would involve the imposition of a new cess upon the people subject to its jurisdiction? Unless a District Board has ceased to be representative in its character, it would not of its own free will and motion do anything which would lead to the imposition of a rate of this kind. Therefore, to require the imposition of a cess at the instance of the District Board, is to declare that this Bill shall be a dead letter. Relieve the Bill of the necessity of imposing a fresh tax, and you will make it a Bill that will be largely availed of by the District Boards. The hon'ble the Financial Secretary has contended that the surplus of the Road Cess fund is not available for sanitary purposes. Is there anything to prevent the Government from directing that works of sanitation should be a first charge on the Road Cess fund? The Government makes rules under the Local Self-Government Act. Is there anything in the Act to prevent the Government from making it obligatory on District and Local Boards that the first charge on the Road Cess fund should be the sanitation of local areas? Roads are good things; but sanitation is better. Roads are a luxury; sanitation is a necessity. People must first live, before they can make use of the roads which a beneficent local authority may provide for them. My hon'ble friend the Financial Secretary admits that roads which used to be maintained out of Provincial funds, have in many instances, been made over to Local Bodies, but my hon'ble friend contends that they have been paid for in every case. I know of at least one road which used to be a provincial road. The local Municipality has now been called upon to maintain it. I am not aware that the Government has made any contribution towards its maintenance. Therefore that is a statement which I believe is not strictly correct, if it is to be accepted as being of general application. My hon'ble freind has pointed out that there is a balance of 14 lakhs of rupees in connection with the Public Works Cess. Who are the contributors to this Cess? The landed interest—zamindars and raiyats; and 14 lakhs of their contributions are devoted to purposes connected with the well-being of the general community. Is this fair and equitable? You do a double injustice to the landed interest by devoting a portion of the proceeds of the Public Works Cess to works which benefit the whole community, and then by again levying a cess upon the landed interest for sanitary works which will also benefit the whole community. When I brought forward an amendment calculated to remedy this injustice, I was told that the object

I had in view was laudable, that the principle of the amendment was unobjectionable, but that it could not be accepted because it appeared to the Government to be unworkable. If that be the view of the Government, it follows that the cess proposed in the Bill is unfair, and I decline to be a party to a measure whch does not deal out even-handed justice to all parties, and I hope the Council will decline to be a party to it. I feel quite sure that if you have this cess embodied in this Bill, District Boards will not give effect to this measure. Therefore it seems to me that it is a matter of vital importance that we should carry the public with us, and then only can we hope to see a Bill based on the principle of local option adopted by our local bodies, and rendered operative for good. I hope and trust the Council will see its way to accept the proposal of the Hon'ble THE MAHARAJA OF DARBHANGA, namely, that the further consideration of this Bill be postponed for three months. No works connected with drainage can possibly be undertaken until after the rains. The Government, in the Public Works Department, will lose nothing by this short delay; and, in the interim, there will be time for further deliberation, public opinion will be conciliated, and the sympathy of the public enlisted on behalf of a measure, for the success of which public sympathy is indispensably necessary."

The Hon'ble MR. LYALL said:—"I have a few remarks to make in answer to some of the observations which have been addressed to the Council by hon'ble members. In the first place I strongly echo what has been said by the Hon'ble MAULVI MUHAMMAD YUSUF, that most of what has been said to-day ought to have been said when the Bill was introduced, and not at the present stage of the Bill. There is, however, this excuse for those hon'ble members who have just taken their seats in Council that they had no other opportunity of expressing their views.

"Before dealing with the remarks of hon'ble members in detail, I wish to say a few words with reference to the motion of the Hon'ble THE MAHARAJA OF DARBHANGA. I have already referred to what has been said to-day in Council, and I may add that I have read the enormous amount of correspondence which has taken place in connection with this Bill, but there is not a single argument which has been urged to-day which has not been urged in that correspondence. Why then should we postpone the passing of a Bill, or refer it back to the Select Committee, when it has been some three years before the public, reckoning

from the time of the Belvedere Conference, and before this Council for 18 months, and when no new thing can be said about it? I must therefore oppose the motion of the Hon'ble THE MAHARAJA OF DARBHANGA.

"Coming to the detailed criticisms of the Hon'ble BABU GURU PROSHAD SEN, I would first point out that he has, until quite the end of his speech, referred to the rate which will be imposed as if it was a tax which would extend all over the country, and would affect every zamindar and raiyat in the Province, and as if it was to be levied permanently. I need hardly say that it will be levied only in a few areas with the consent of those who will pay, and that the extreme incidence will be 30 years.

"In dealing with the incidence of Road and Public Works Cesses, the Hon'ble Member has spoken as if the whole cess were paid by the zamindars, while as a fact half is paid by the raiyats.

"The Hon'ble Member next said that everything contained in this Act is already covered by existing legislation, and the same point was urged by the Hon'ble MR. A. M. BOSE. It is quite true that to a certain extent, section 109 of the Road Cess Act and section 79 of the Local Self-Government Act do apply to such schemes, but there are many schemes which District Boards are obliged to reject for want of funds. We now allow the inhabitants of a local area, who desire the execution of such a scheme, to say to the District Boards—'Very well, if you have no funds, we will pay for it, so give us our scheme.' It is in this respect that this Act makes provision for what could not be done before.

"The next point is as to the maximum rate of the cess. That point was very fully discussed in the Select Committee, and we did not fix any maximum limit, because we considered that it was very possible that where the amount was small, the people would prefer to pay it straight off, instead of in the course of a number of years.

"The Hon'ble Member next dealt with the question of the poverty of the raiyats. My hon'ble friend is the representative of the District Boards of the Dacca Division, for which Boards he has apparently very little respect, but the statistics which he quoted refer entirely to the Patna Division; the famine he referred to occurred in that Division, and statistics regarding the average acreage of a raiyat's holding are also taken from that division. That acreage which he quotes as affording a bare livelihood in India is the exact quantity,

3 acres, which is held to be the ideal holding of the English labourer, and the native raiyat has already got the cow. As a fact, however, there is little or no chance of this Act ever being worked in the Patna Division, and the raiyats of this division represented by the Hon'ble Member are well able to pay this or any other rate.

"Another point to which the Hon'ble Member referred is the existence of a large balance which he referred to as 25 lakhs, but which the Hon'ble MR. A M. BOSE called 17 lakhs standing at the credit of the District Boards, but I ask the Council to remember that there are 38 District Boards in the Province, and that it is utterly impossible for any public body like the District Boards or Municipalities to do without a working balance. Even the Lieutenant-Governor is tied down by the Government of India to keep a working balance in the Provincial revenues, and the balances at the credit of the several District Boards are no more than necessary working balances.

"The hon'ble member stated that at times the District Boards voted money improperly, and he instanced a matter in which I had some personal concern. I remember well the circumstances to which the hon'ble member referred. When Sir George Campbell visited Dacca, the question of getting a dredger to raise silt from the river bed was under the consideration of the District Board. Sir George highly approved of the proposal, and promised to make a grant of half the money. As a necessary consequence of this grant from the public funds, the dredger was ordered through the India Office; the specifications were never sent to the Municipal Board. And it was not until the dredger was nearly ready that the Board saw the plans. It then appeared that no locomotive power had been provided. The Board pointed this out, and at the last moment very weak locomotive power was added. When the dredger arrived it was found that the engine supplied was quite incapable of moving the dredger in the rivers of East Bengal. The result was that the article was useless to Dacca and the Government finally took it over, and to the best of my belief it is still working.

"The next point to which the Hon'ble Member referred was the joint action of District Boards for a common object. He would allow no Board to put pressure upon another Board, so that any Board would be able to hamper the action of other Boards by refusing to carry out a continuous scheme. I venture to think that the proposal of the Hon'ble Member would be a step in the

wrong direction, and on the contrary I think this is one of the best provisions of the Bill.

"I do not think I need reply to what fell from the Hon'ble MR. A. M. BOSE as to the submission of detailed estimates of schemes under this Act. I think the Council will agree with me that his suggestions are quite impracticable. The other criticisms in the opening part of the speech of the Hon'ble Member might properly be replied to by the Hon'ble BABU SURENDRANATH BANERJEE, who is far more the author of this Bill than I am.

"Another point to which the Hon'ble MR. A. M. BOSE referred was that only 38 per cent. of the members of District Boards are elected, and of those who elect them, only 35 per cent. are themselves elected. I am not myself a thorough believer in the virtues of election, and I think we have a very good example of the results of the elective system in the Municipality here in Calcutta. Here, as in other similar bodies—and I think the nominated members keep the bodies of which they are members from making a good many mistakes—I think the time has not yet come when we can trust to an entirely elected body.

"As regards the observations which fell from my hon'ble friend, BABU SURENDRANATH BANERJEE, I have a better opinion of District Boards than he has. I think they will put forward many schemes which will not cost much money, and which will do a great deal of good.

"With regard to the question of taxation generally, I have to say a very few words in connection with the remarks of my hon'ble friend. The question was fully and thoroughly discussed at the Belvedere Conference, and it was well understood that the carrying out of this Bill would entail taxation. Raja Peary Mohun Mukerjee brought the matter very fully before us, inasmuch as his main objection to the proposal was that it would involve taxation. Every member present at that Conference had it fully before him that taxation must come in some way or other. We have tried our best in Select Committee to evolve a perfectly fair method of taxation, and I for one do not think a better proposal could be devised. The Hon'ble BABU ESHAN CHUNDER MITTER simply says it can be done, but he gave us no method of doing it. Not one of the proposals which have been considered and rejected have any possibility of being worked successfully."

[*The President.*]

The Hon'ble THE PRESIDENT said:—"The debate to which we have listened has been of a very discussive character, and as I had occasion more than once to remark, has included subjects which one could hardly have expected to be touched upon in the closing debate on the passing of the Bill; but there was a special reason in the case of one and possibly of two hon'ble members, because of the newness of those members. I cannot but congratulate the Council in having had the advantage of hearing their views, and it cannot be said that every opportunity has not been given to those who were dissatisfied with the Bill to represent their opinions and bring forward their arguments with the utmost possible freedom and with abundant time given to them for preparation.

"The debate to-day has turned chiefly on the financial clauses of the Bill, and I think there is still considerable misapprehension on the subject in spite of the extent to which it has already been discussed. Our old friend the Permanent Settlement has been trotted out again. I cannot conceive how any reasonable person can suppose that the imposition of a cess under this Act has the slightest connection with any invasion of the Permanent Settlement. If there is a proposal to drain any obstructed channel, and if the zamindars and owners and occupiers of land which lie within the obstructed tract strongly object to any steps being taken to relieve the obstruction, I think they would have sufficient influence with the District Board to prevent any scheme being carried through. It has been said, and I was sorry to hear it, especially from the hon'ble member who has been nominated on the election of the District Boards of Dacca, that the District Board is not a representative body, and they have been belittled by one who has been sent here to represent them. I do not agree with what that hon'ble member has said, and I do not think he correctly represents the independence and freedom of the District Boards with respect to matters which come before them, whether they are supported by the Government nominees or not. We have the opposite view stated by the Hon'ble BABU SURENDRANATH BANERJEE that he was convinced that no District Board would propose any scheme which would involve the imposition of a cess. However that may be, I think it may be accepted that a District Board would not sanction the imposition of a cess against the resolute and strong opposition of the persons who would be called upon to pay that cess. If then a scheme has been carried through the District Board it must have been with the consent of the landowners, and when the works have been carried out, who

would have to pay for them? As the hon'ble member in charge of the Bill has said, if the District Board can pay for them out of money in its hands, or if the Government can make up a sum which, added to the amount which the District Board can give, would pay for the work, then there will be no occasion for the imposition of a cess. The Hon'ble BABU GURU PROSHAD SEN is in my opinion under a misapprehension in supposing that whereas drainage schemes are now being or can be carried out under the provisions of the Local Self-Government Act, because under this Act the District Boards will be able to impose a cess, therefore they will determine to bring the proposed work under the provisions of this Act and not under the Local Self-Government Act. I rather think the correct argument is that they will not impose a cess unless they find it absolutely necessary. Suppose it is necessary to impose a cess for a scheme of drainage, who should pay for it except those who benefit by it? These are principally the zamindars and holders and occupiers of the land, and can it be said that because there is a Permanent Settlement of the Land Revenue the zamindars should derive the benefit from such work and somebody else should pay for it? It was an impossible position to take up that the Permanent Settlement entitled them to have their lands drained and the obstructions they have made, or allowed to be made, cleared out of these drainage channels at the cost of others. The idea that the landed interest, who amounted to about 90 per cent. of the rural population should enjoy the benefits which would result from improved drainage, and that somebody else should provide the money was so absurd that it could not be entertained. It had been given up long ago in the two classes of cases of this kind which already exist. We have had frequent references to two Acts which are in existence, the Embankment Act and the Agricultural Drainage Act, which it is argued should take the place of this Act. The hon'ble member, the Secretary in the Financial Department has dealt with the suggestion as it affects the Embankment Act, and he might also have referred to the Agricultural Drainage Act under which the cost is equally borne by the landed interest. The hon'ble members who referred to these Acts forgot to notice that in both these Acts the whole of the cost is thrown on the landlord, and he does not get the power of passing on the half of it to the raiyats. Under the Embankment Act, he can pass it on to the tenure-holder, but not to the raiyat; under the Agricultural Drainage Act, he cannot pass it on to either, and can only recover from

the raiyats by raising their rents; so that the two Acts which the Government are asked to consider lay on the shoulders of the landlord, a burden far greater than the burden we propose to impose upon him by this Bill. The little finger of these gentlemen will be heavier on the zamindars than the whole weight of the Government Bill.

"I have thus dealt with the proposition that land-owners should not be taxed at all. I will now pass on to the second objection that land-owners and agriculturists should not be the only classes to be taxed, as they will not be the only classes that will be benefited—that the taxation proposed by the Government will be of the nature of class taxation. Here again, we have perhaps been a little too modest, and have allowed ourselves to be trampled upon unnecessarily. It is necessary to point out that the class upon which we are imposing a cess is practically the whole population, and that the class who will escape it are a very infinitesimal portion, hardly more than 5 per cent. We say that it is impossible to devise means by which to impose a cess upon those who are not agriculturists, in order that they may pay their share of the cost, without going through an amount of labour, creating an amount of machinery for assessment, for giving notice, for hearing objections, for hearing appeals, and for collecting the cess, and incurring an amount of expenditure which no statesman would think of incurring.

"We have an instance before us to-day of the amount of error which exists on this subject. The British Indian Association have had the rashness to assert that the Census returns show that the agriculturists upon whom this rate would fall form barely half of the population. The gentleman who wrote that letter could not have consulted the Census returns, but must have been content to take his figures from some other source. I think I have recently seen that statement in a newspaper article, and it may have been taken from that source without taking the trouble of verifying the reference. My hon'ble friend, the Secretary in the Financial Department, has exposed the incorrectness of such an assertion, and he gave the exact figures of the Census returns which put the agriculturists proper and the rural labourers taken together at 78 per cent., and he also gave other references which justified the assertion generally accepted in all economic writings on Indian subjects, that the agricultural population cannot be taken at less than 90 per cent. of the whole. The Hon'ble Babu Eshan Chunder Mittra evidently failed to hear what the

Hon'ble MR. RISLEY had said, and is still in the vale of ignorance, for he repeated the statement of the British Indian Association that the agricultural population is barely half of the whole population. This is an instance which shows how hard error dies, and how easily a misstatement, once set afloat, is, taken up and repeated without criticism or examination. It is important to impress upon the Associations and other public bodies who address the Council, that if they want honestly and intelligently to assist us in our deliberations, they must learn to verify their facts and assertions and know what they are talking about. If these matters were properly understood, the Council would not have so much of its time wasted.

"I turn next to some financial suggestions which belong to this part of the subject. We have heard to-day some instances of the extraordinary financial ignorance which used to prevail, but which has been largely dispelled by the knowledge gained in the discussions on the Budget. For instance, we are told that the District Boards have such large balances that they could meet any schemes for drainage out of those balances. The gentlemen who made these assertions did not know accurately what the amount of these balances was, but the true figure was 14 lakhs of rupees. They did not consider that District Boards must have working balances in hand, and that for 38 Boards the average balance was under Rs. 40,000, which would not go far towards a large drainage scheme. Nor were they aware that in too many cases the whole of the balance has been forestalled, the District Boards having incurred liabilities which, if presented at the end of March, would have swallowed up the whole of their balances. Another thing we have been told, is, that the Government of Bengal should appeal to the Government of India for money to carry out schemes of drainage instead of imposing a rate. Where was the Government of India to find the money? People talked as if the Government went about with money in their pockets ready to give it away as people give charity to beggars. If the Local Government gave money for these drainage schemes when it had not a surplus, it would have to take it away from some other equally important source of expenditure. If the Government of India gave the money, they would have to rob some other Government. Why should the Government of the North-Western Provinces, for instance, be taxed to improve the sanitary drainage of Bengal? I think one beneficial result, which will accrue when members get into the habit of discussing public measures, is

[*The President.*]

that in the course of time the Council will be saved from a repetition of arguments of this kind.

"The Hon'ble BABU SURENDRANATH BANERJEE has suggested that I should direct that sanitation should be the first charge upon the road cess. I must say I cannot agree with the hon'ble member, for this simple reason that the road cess is the road cess; it is not a sanitation cess. It is imposed for the purpose of making roads, repairing roads, and extending roads, and it would be an improper and dishonest diversion of those funds if we deliberately starved the roads for purposes of drainage. What we do hope is that the proceeds of the road cess will be sufficient for roads and leave a balance over. Some districts found it easy to make all necessary provisions for roads, and yet have a surplus. Backergunge, for instance, a district with more water-ways than roads was able to give a sum of Rs. 10,000 to the District funds. My hon'ble friend, MR. ROMESH CHUNDER DUTT, has told us how much the District Board of Burdwan has been able to do towards these sanitary measures. In this respect the despatch of the Duke of Argyll, from which hon'ble members have largely quoted, lays down instructions on this point in a very stringent form—

'Roads,' he said, 'are a first requisite in the improvement of every country, and although as yet they may not be equally valued by the people, it is the duty of the Government to think for them in this matter, and the benefits they must derive will become yearly more apparent to themselves.'

"I hope the hon'ble member will think for them. While I have the despatch in my hand, I should like to draw attention to a passage at the end of paragraph 24 which bears a good deal on the discussion which has taken place to-day. It is there said 'If there are some great improvements in their condition which we cannot afford to undertake, we must not be precluded from throwing the cost of such improvements upon those growing resources of which we heartily desire to see the people in enjoyment, but which are due in a great measure to the Government we provide.'

"We are exactly carrying out those principles.

"With regard to the connection between drainage and malaria, we had a very useful statement from my hon'ble friend, the Financial Secretary,

and I am glad that he has drawn attention to the letter of Dr. Harvey. I regret to find, that a copy of it was not circulated to all hon'ble members, although it was laid before the Select Committee. It is a letter of the greatest importance and will go a great way to form public opinion on this subject, and I therefore propose to have it published in the Government Gazette.

"In addition to what was said by Dr. Harvey, and what had been stated by the Hon'ble MR. RISLEY to-day, I would draw attention to an article which appeared in the *Pioneer* of this morning, which treats of malaria as a thing as to which experts have now hardly any doubt that it is due to a bacillus which is to be found in the blood. There are no doubt some who still suspend their judgment, or consider the evidence weak, but the general tendency of science in the present day is in the direction of believing that this disease (malarial fever) is due to a poisonous bacillus of this kind, and that by effective drainage you can take an important step in the direction of destroying it.

"NOW with regard to the proposal of the Hon'ble THE MAHARAJA OF DARBHANGA to postpone the passing of the Bill, I agree with the hon'ble member in charge of the Bill that no reason has been shown for taking such a course. Few Bills have received fuller and longer consideration than this, and the effect of postponing its passing will be, either that I must leave it to my successor which would not be fair to him, or that a special Session of Council must be held early in December at a time when otherwise it would not be necessary to summon you. The effect of such delay would be to produce the precise effect which the hon'ble member thought it would not produce, viz., to prevent anything being done under the Act in the next cold weather, for if passed by the Council in December, it could hardly expect to receive the sanction of the Governor-General in Council before January or February, and by that time it would be too late for any practical work to be done in the cold season. This would be no argument against delay if it were shown that on general grounds delay is required for the fuller discussion of new arguments and objections, but no such cause as this really exists or is even alleged to exist. Nothing has been brought forward which is new, or which

[*The President.*]

requires further consideration; we have all made up our minds, and the only result will be that we shall be bombarded with more papers from local bodies, such as those we have been lately receiving. From one point of view it is hardly courteous that communications addressed to this Council should not be noticed, but from another point of view many of them are of a description which makes it a waste of time to consider them. For instance, there is a communication from a Murshidabad Association, in which they say:—'We have learned with considerable consternation that it is intended to impose a tax,' and they say this after the Bill has been for a year and a half before the Council! Why, this question was specially discussed at the Provincial Conference which met at Murshidabad only the other day, and they (unlike the British Indian Association, who saw no merit in the alterations in the Bill) expressed their satisfaction at the amendments which had been introduced. There were there assembled delegates collected from the whole of Bengal, and yet the Murshidabad Association never heard a word about it. There can be no doubt that for people of this kind to take a share in discussing public measures introduced by the Government will afford them a much-needed education. Then there is the Rajshahi Association who take exception to the financial clauses of the Bill, and ask attention to what they had previously written on the subject. Would it surprise the Council to hear that in the previous letter received from the Rajshahi Association nothing is said about the financial clauses of the Bill, except on the point that the cess should be so distributed as to include other than the agricultural classes. It is quite clear that these are mere puppets, and that the strings which make them act are drawn elsewhere. And it is the expectation of receiving such papers and such arguments as these, which is put forward to discourage the Council from passing a Bill which has been under consideration for a year and a half, during which time every point had been minutely examined and amply discussed. On the contrary, it appears to me that they afford a good reason why the Bill should be passed now, and thus save us from the receipt of further communications of the kind to which I have referred.

"In putting the motion of the Hon'ble THE MAHARAJA OF DARBHANGA, I can only say that it is directly opposed to the wishes of the Government. I am anxious that the Bill should be passed to-day, and I trust the majority of the Council will vote on my side."

[*The President ; Maharaja Sir Luchmessur Singh Bahadur of Darbhanga.*]

The motion that the further consideration of the Bill be postponed for three months was put and the Council divided :—

Ayes 7.

The Hon'ble Babu Guru Proshad Sen.
„ Hon'ble Rai Eshan Chunder Mittra Bahadur.
„ Hon'ble Mr. A. M. Bose.
„ Hon'ble Mr. Smyth.
„ Hon'ble Maharaja Jagadindra Nath Roy of Nator.
„ Hon'ble Maharaja Sir Luchmessur Singh Bahadur of Darbhanga.
„ Hon'ble Babu Surendranath Banerjee.

Noes 10.

The Hon'ble Nawab Syud Ameer Hossein.
„ Hon'ble Maulvi Muhammad Yusaf Khan Bahadur.
„ Hon'ble Rai Durga Gati Banerjea Bahadur.
„ Hon'ble Mr. Dutt.
„ Hon'ble Mr. Risley.
„ Hon'ble Mr. Buckland.
„ Hon'ble Mr. Bourdillon.
„ Hon'ble Mr. Lyall.
„ Hon'ble Mr. Cotton.
„ Hon'ble Sir Griffith Evans.

So the motion was lost.

The motion that the Bill be now passed having been put,

The Hon'ble MAHARAJA SIR LUCHMESSUR SINGH BAHADUR OF DARBHANGA, said :—"I wish to say a few words on the financial clauses of the Bill. I say it is intended to tax only two classes of the community, while the works proposed to be carried out under the Bill will benefit other classes as well. It has been said that the majority of the inhabitants of this province consists of landlords and tenants, that is to say about 80 per cent. of the whole population. Is that any reason why the other 20 per cent. should be exempted from the taxation to be imposed under this Bill? I say that the very fact of taxing the landholding classes for the construction of works which will benefit other portions of the community as well is a direct infringement of the Permanent Settlement. No doubt there are people who consider that the levy of a cess on land is not an infringement on the Permanent Settlement, but legal opinion on this point is divided. Such eminent lawyers as Sir Barnes Peacock and Sir Erskine Perry have recorded their opinion that the imposition of such a cess is an infringement of the Permanent Settlement. There can be no doubt of the fact that among the landed classes there is a very strong opinion that the levy of the proposed cess will be a direct infringement of a direct promise made on behalf of the Government at the time of Lord Cornwallis, and this in itself is, I think, a sufficient reason for not inflicting any more taxation of this sort on the land. It may be that our contention is wrong ; it may be that

are in the right. But there can be no two questions that there is a very strong feeling not only among us, but among other classes, that the Government has broken faith with us. Is it politic for the Government to do so? It may be that we are biassed in this matter, but I say, as was said by the Hon'ble BABU SURENDRANATH BANERJEE the other day, that if we err we err in good company. Sir Frederick Halliday, Mr. Ross Donelly Mangles, and Sir Thoby Prinsep, are all of the same opinion, and can it be said that these gentlemen were biassed in our favour? It is for these reasons that I wish to enter my most strong protest against any taxation which is inflicted upon the agricultural classes alone, but the benefits from which will be derived by the whole community. It has been said that one of the chief reasons for not taxing other classes as well is the difficulty of devising a tax which is workable. It may be a very difficult thing to assess other classes under this Bill, but because that difficulty exists, is it right that the agricultural and the landed classes should be made to pay for benefits which will accrue to other classes as well? It may be that there is no other way out of the difficulty, but one way is plain, namely, that the Government can, if it chooses, pay the expenses of these drainage works from the Imperial Exchequer."

The motion that the Bill as settled by the Council be passed was then put and the Council divided.

Ayes 10.	*Noes* 7.
The Hon'ble Nawab Syud Ameer Hossein.	The Hon'ble Babu Guru Proshad Sen.
„ Hon'ble Maulvi Muhammad Yusuf Khan Bahadur.	„ Hon'ble Rai Eshan Chunder Mittra Bahadur.
„ Hon'ble Rai Durga Gati Banerjea Bahadur.	„ Hon'ble Mr. A. M. Bose.
„ Hon'ble Mr. Dutt.	„ Hon'ble Mr. Smyth.
„ Hon'ble Mr. Risley.	„ Hon'ble Maharaja Jagadindra Nath Roy of Nator.
„ Hon'ble Mr. Buckland.	„ Hon'ble Maharaja Sir Luchmessur Singh Bahadur of Darbhanga.
„ Hon'ble Mr. Bourdillon.	„ Hon'ble Babu Surendranath Banerjee.
„ Hon'ble Mr. Lyall.	
„ Hon'ble Mr. Cotton.	
„ Hon'ble Sir Griffith Evans.	

So the motion was carried and the Bill passed.

The Council adjourned *sine die*.

C. E. GREY,

Offg. Assistant Secretary to the Govt. of Bengal,
Legislative Department.

CALCUTTA;
The 27th August, 1895.

Reg. No. 509G—300—29-8-95.

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